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SENATE BILL 194

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

ROMAN M. MAES III

AN ACT

RELATING TO THE REGULATION OF PUBLIC UTILITIES AND CERTAIN
OTHER INDUSTRIES WHICH AFFECT THE PUBLIC INTEREST; PROVIDING
FOR THE ENCOURAGEMENT AND PROTECTION OF COMPETITION AND THE
ULTIMATE DIMINISHMENT OF REGULATION; PROVIDING BOTH THE
FRAMEWORK AND POLICIES NECESSARY TO CREATE A MODERN AND
RESPONSIBLE PUBLIC REGULATION COMMISSION ("THE COMMISSION") TO
REPLACE THE STATE CORPORATION COMMISSION AND THE NEW MEXICO
PUBLIC UTILITY COMMISSION, WHICH ARE HEREBY ABOLISHED,
PURSUANT TO ARTICLE 11, SECTIONS 1 AND 2 OF THE CONSTITUTION
OF NEW MEXICO; PROVIDING FOR THE REPEAL OF OBSOLETE
SUBSTANTIVE LEGISLATION REGULATING ENTITIES AND OTHER
INDUSTRIES; PROVIDING FOR LEGISLATIVE POLICY AND DIRECTIONS
FOR THE COMMISSION TO PROPERLY PERFORM ITS DUTIES HEREUNDER;
MOVING THE STATE FIRE MARSHAL AND THE FIREFIGHTER'S TRAINING
ACADEMY TO THE DEPARTMENT OF PUBLIC SAFETY; ABOLISHING THE

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1 INSURANCE BOARD AND THE FIRE BOARD; AND TRANSFERRING TO THE
2 COMMISSION PERSONNEL, PROPERTY, AND EXISTING CONTRACTUAL
3 AGREEMENTS FROM THE ABOLISHED COMMISSIONS.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6
7 TITLE I. GENERAL PROVISIONS APPLICABLE TO PUBLIC UTILITIES
8 AND TO
9 CERTAIN ENTITIES WHICH ARE NOT PUBLIC UTILITIES
10 SUBTITLE A. GENERAL PROVISIONS

11
12 Sec. 1.001. **SHORT TITLE.** This Act may be referred to as the
13 “Public Regulation Act of 1998.”

14 Sec. 1.002. **LEGISLATIVE POLICY AND PURPOSE.** This Act is
15 enacted to create a Public Regulation Commission (1) to
16 promote free market competition; (2) to regulate market
17 dominate public utilities; and (3) to regulate certain
18 entities which are not public utilities but which also affect
19 the public interest.

20
21 Regarding public utilities as defined hereafter, in
22 Titles II, III and IV of this Act, it is the policy and
23 purpose of the legislature to allow and encourage open
24 market competition between and among public utilities
25 which have the market power to control services, and thus

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1 must be subject to regulation, and entitled which are not
2 public utilities because they do not have such market
3 power and should not be regulated. The legislature
4 recognizes that regulation of investor-owned public
5 utilities is, at best, an imperfect substitute for
6 competition and should be as limited and as short-term as
7 market conditions permit. Accordingly, market entry by
8 non-dominant firms must be encouraged and the regulation
9 of dominant firms should be exercised by the commission
10 only during a transition period for as long and to the
11 extent it can be factually demonstrated that regulation
12 is essential to protect consumers and competitors from
13 excessive pricing above real costs or predatory anti-
14 competitive policies or practices. The commission shall
15 deregulate previously-dominant public utilities as soon
16 as a vigorous competitive market place exists. The
17 determinations of the commission shall be made only after
18 notice, pre-hearing discovery and factual findings are
19 made in accordance with court rules of procedure and
20 evidence.

21
22 The commission shall exercise its responsibilities in a
23 manner which is compatible and consistent with federal
24 statutes, regulations and case decisions, except to the
25 extent the commission has exclusive state jurisdiction

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1 under applicable constitutional principles and the
2 exercise of such state jurisdiction is consistent with
3 this Act.

4
5 The Legislature's further policies as to electric public
6 utilities and telecommunications public utilities are
7 stated in Sec. 2.001 and 3.002 below.

8
9 Regarding those industries and businesses which are not
10 public utilities, in Title V of this Act, as defined
11 hereafter, the commission shall regulate such entities by
12 licenses and other regulatory methods hereafter specified
13 in Title V, only to the extent essential to protect the
14 public interest and safety. This Act shall not be
15 construed to authorize the commission to regulate such
16 entities in a manner which would impair any entity's
17 property rights except for serious violation of its
18 license or obligations under this Act. Each such entity
19 shall have the opportunity to conduct a profitable
20 business and freely and fairly compete with other
21 regulated entities in the same line of business.

22 Sec. 1.003. DEFINITIONS: In this Act:

23 (1) "Affected person" means any public utility affected
24 by an action of the regulatory authority, any
25 person or corporation, whose utility service or

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1 rates are affected by any proceeding before the
2 regulatory authority, or any person or corporation
3 that is a competitor of a public utility with
4 respect to any service performed by the utility or
5 that desires to enter into competition.

6 (2) "Affiliated interest" or "affiliate" means:

- 7 (A) any person or corporation owning or holding
8 directly or indirectly, five percent or more
9 of the voting securities of a public utility;
- 10 (B) any person or corporation in any chain of
11 successive ownership of five percent or more
12 of the voting securities of a public utility;
- 13 (C) any corporation five percent or more of the
14 voting securities of which is owned or
15 controlled, directly or indirectly, by a
16 public utility;
- 17 (D) any corporation five percent or more of the
18 voting securities of which is owned or
19 controlled, directly or indirectly, by any
20 person or corporation that owns or controls,
21 directly or indirectly, five percent or more
22 of the voting securities of any public utility
23 or by any person or corporation in any chain
24 of successive ownership of five percent of
25 such securities;

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- (E) any person who is an officer or director of a public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;
- (F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a public utility, or over which a public utility exercises that control, or that is under common control with a public utility, that control being the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or
- (G) any person or corporation that the commission after notice and hearing determines is actually exercising that substantial influence over the policies and action of the public utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or

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1 by action in concert, that together they are
2 affiliated with the public utility within the
3 meaning of this section, even though no one of
4 them alone is so affiliated.

5 (3) "Allocations" means, for all utilities, the
6 division of plant, revenues, expenses, taxes, and
7 reserves between municipalities or between
8 municipalities and unincorporated areas, where
9 those items are used for providing public utility
10 service in a municipality, or for a municipality
11 and unincorporated areas.

12 (4) "Commission" means the New Mexico Public Regulatory
13 Commission, including its Commissioners, employees
14 and counsel.

15 (5) "Commissioner" means a member of the New Mexico
16 Public Regulation Commission.

17 (6) "Corporation" means any corporation, joint-stock
18 company, or association, domestic or foreign, and
19 its lessees, assignees, trustees, receivers, or
20 other successors in interest, having any of the
21 powers or privileges of corporations not possessed
22 by individuals or partnerships, but does not
23 include municipal corporations unless expressly
24 provided otherwise in this Act.

25 (7) "Facilities" means all the plant and equipment of a

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1 public utility, including all tangible and
2 intangible real and personal property without
3 limitation, and any and all means and
4 instrumentalities in any manner owned, operated,
5 leased, licensed, used, controlled, furnished, or
6 supplied for, by, or in connection with the
7 business of any public utility.

8 (8) "Municipally owned utility" means any utility
9 owned, operated, and controlled by a municipality
10 or by a nonprofit corporation whose directors are
11 appointed by one or more municipalities.

12 (9) "Office" means the Office of Public Counsel.

13 (10) "Order" means the whole or a part of the final
14 disposition, whether affirmative, negative,
15 injunctive, or declaratory in form, of the
16 regulatory authority in a matter other than
17 rulemaking, but including issuance of licenses,
18 certificates of convenience and necessity and
19 ratesetting.

20 (11) "Other entities regulated by this Act, but not
21 public utilities" means any person, corporation,
22 other business entity and affiliates which, by any
23 means or technology:

24 (A) by motor carrier or railroad, provides
25 transportation of persons or goods, whether as

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- 1 common carriers, contract carriers or
2 otherwise, in this state; or
3 (B) provides transmission or pipeline services in
4 this state, other than those public utilities
5 providing transmission or pipeline services;
6 or
7 (C) provides insurance coverage or related
8 services or products and others engaged in
9 risk assumption in this state; or
10 (D) or engages in business subject to the Business
11 Development Corporation Act or the nonprofit
12 Corporation Act; or
13 (E) or ambulance services
14 (F) or provides natural gas in this state;
15 (G) or provides water in this state;
16 (H) or functions as state fire marshal and related
17 functions.
18 (12) "Person" includes a natural person, partnership of
19 two or more persons having a joint or common
20 interest, mutual or cooperative association,
21 corporation, rural electric cooperative, rural
22 telephone cooperative, lessees, trustees and
23 receivers.
24 (13) "Proceeding" means any hearing, investigation,
25 inquiry, or other fact-finding or decision making

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1 procedure under this Act and includes the denial of
2 relief or the dismissal of a complaint.

3 (13A) The term "ratemaking proceeding" is limited to
4 those proceedings in which rates are changed,
5 except the term shall include proceedings
6 initiated under Section 2.051 of this Act.

7 (14) "Public Utility" means any person, corporation,
8 other business entity and affiliates which, by any
9 means or technology:

10 (a) provides electric power to consumers in this
11 state or other electric public utilities; or

12 (b) provides telecommunications services to
13 consumers in this state or other
14 telecommunications public utilities or
15 telecommunications firms which are not public
16 utilities; or

17 (c) provides water to consumers in this state; or

18 (d) provides natural gas to consumers in this
19 state.

20 (15) "Rate" means and includes ever compensation,
21 tariff, charge, fare, toll, rental, and
22 classification, or any of them demanded, observed,
23 charged or collected whether directly or indirectly
24 by any public utility for any service, product, or
25 commodity described in the definition of "utility"

1 in Section 2.0011 or 3.002 of this Act and any
2 rules, regulations, practices, or contracts
3 affecting any such compensation, tariff, charge,
4 fare, toll, rental, or classification.

5 (16) "Regulatory authority" means in accordance with the
6 context where it is found, the commission.

7 (17) "Service" is used in this Act in its broadest and
8 most inclusive sense and includes any and all acts
9 done, rendered, or performed, any and all things
10 furnished or supplied, and any and all facilities
11 used, furnished, or supplied by public utilities in
12 the performance of their duties under this Act to
13 their patrons, employees, other public utilities
14 and the public, as well as the interchange of
15 facilities between two or more of them. The term
16 does not include the printing, distribution, or
17 sale of advertising in telephone directories.

18 (18) "Test year" means the most recent 12 months for
19 which operating data for a public utility are
20 available and shall commence with a calendar
21 quarter or a fiscal year quarter.

22 (19) "Trade association" means a nonprofit, cooperative,
23 and voluntarily joined association of business or
24 professional persons who are employed by public
25 utilities or utility competitors to assist the

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1 public utility industry, a utility competitor, or
2 the industry's or competitor's employees in dealing
3 with mutual business or professional problems and
4 in promoting their common interest.

5 Sec. 1.004. APPLICABILITY OF RULES OF CIVIL PROCEDURE , The
6 RULES OF
7 EVIDENCE AND OPEN MEETINGS LAW.

8 (a) The Rules of Civil Procedure, and the Rules of
9 Evidence, as applied in non-jury trials by the
10 District Court shall apply to all proceedings under
11 this Act except to the extent inconsistent with
12 this Act.

13
14 Sec. 1.005. ENTITY, COMPETITOR, OR SUPPLIER AFFECTED IN
15 MANNER OTHER THAN BY SETTING OF RATES. In this Act, an
16 entity, utility competitor, or utility
17 supplier is considered to be affected in a
18 manner other than by the setting of rates for
19 that class of customer if during a relevant
20 calendar year the entity provides fuel,
21 utility-related goods, utility-related
22 products, or utility-related services to a
23 regulated or unregulated provider of
24 telecommunications or electric services or to
25 an affiliated interest in an amount equal to

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1 the greater of \$10,000 or 10 percent of the
2 person's business.

3 [Sec. 1.006 - 1.0020 reserved]

4 SUBTITLE B. ORGANIZATION OF COMMISSION

5 Sec. 1.021. CREATION OF COMMISSION; APPOINTMENT AND TERMS;
6 CHAIRMAN

7 (a) The New Mexico Public Regulation Commission
8 consists of five commissioners, who shall be
9 elected from districts for staggered four-year
10 terms beginning on
11 January 1, 1999.

12 (b) Each commissioner shall hold office until his
13 successor is appointed and qualified.

14 (c) A majority of the five commissioners shall
15 designate a member of the commission as chairman of
16 the commission.

17 (d) Election to the commission shall be made without
18 regard to the race, color, disability, sex,
19 religion, age, or national origin of the
20 candidates.

21 Sec. 1.022. QUALIFICATIONS; OATH; PROHIBITED ACTIVITIES.

22 (a) To be eligible for election as a commissioner, a
23 person must be a qualified voter, a citizen of the
24 United States, a resident of the State of New
25 Mexico and a resident of the district in which he

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1 or she was elected.

2 (b) Each commissioner shall qualify for office by
3 taking the oath prescribed for other state
4 officers.

5 (c) A person is not eligible for election as a
6 commissioner if at any time during the two year
7 period immediately preceding his election he served
8 as a commissioner or executive director of either
9 the New Mexico Corporation Commission or the New
10 Mexico Public Utility Commission, or as an officer,
11 director, owner, employee, partner, lobbyist, or
12 legal representative of any public utility, other
13 entity regulated by this Act, affiliated interest,
14 or direct competitor of a public utility or he
15 owned or controlled, directly or indirectly, stocks
16 or bonds of any class with a value of \$10,000 or
17 more in a public utility, other entity regulated by
18 this Act, affiliated interest, or direct competitor
19 of a public utility.

20 (d) A person who is required to register as a lobbyist
21 under other laws, because of the person's
22 activities for compensation on behalf of a business
23 or profession related to the operation of the
24 commission may not serve as a member of the
25 commission or employee of the commission.

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- 1 (e) A person is not eligible for election as a
2 commissioner or for employment as the general
3 counsel or executive director of the commission if:
- 4 (1) The person served or serves on the board of
5 directors of a company that supplies fuel,
6 utility-related services, or utility-related
7 products to regulated or unregulated electric,
8 telecommunications, gas or water utilities; or
9 other regulated entities; or
- 10 (2) The person or the person's spouse:
- 11 (A) is employed by or participates in the
12 management of a business entity or other
13 organization regulated by the commission
14 or receiving funds from the commission;
- 15 (B) owns or controls directly or indirectly
16 more than a 10 percent interest or a
17 pecuniary interest with a value
18 exceeding \$10,000 in:
- 19 (i) a business entity or other
20 organization regulated by the
21 commission or receiving funds from
22 the commission; or
- 23 (ii) any utility competitor, utility
24 supplier, or other entity affected
25 by a commission decision in a

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manner other than by the setting of rates for that class of customer;

(C) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or

reimbursement authorized by law for commission membership, attendance, or expenses; or

(D) notwithstanding Paragraph (B) of this subdivision, has an interest in a mutual fund or retirement fund in which more than 10 percent of the fund's holdings at the time of appointment is in a single utility, utility competitor, or utility supplier in this state and the person does not disclose this information to the governor, senate, commission, or other entity, as appropriate.

(f) A person who is a spouse of an officer, manager or paid consultant of a trade association in the field of public utilities may not be a commissioner and may not be a commission employee.

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1 Sec. 1.023. **PROHIBITED ACTIVITIES**

2 (a) A commissioner or employee of the commission may
3 not do any of the following after his election or
4 during his period of service with the commission:

5 (1) have any pecuniary interest, either as an
6 officer, director, partner, owner, employee,
7 attorney, consultant, or otherwise, in any
8 public utility, other entity regulated by this
9 Act, or affiliated interest, or in any person
10 or corporation or other business entity a
11 significant portion of whose business consists
12 of furnishing goods or services to public
13 utilities or affiliated interests, but not
14 including a nonprofit group or association
15 solely

16 supported by gratuitous contributions of
17 money, property or services, other than a
18 trade association;

19 (2) own or control any securities in a public
20 utility, other entity regulated by this Act,
21 affiliated interest, or direct competitor of a
22 public utility, either directly or indirectly;
23 or

24 (3) accept any gift, gratuity, or entertainment
25 whatsoever from any public utility, other

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1 entity regulated by this Act, affiliated
2 interest, or direct competitor of a public
3 utility, or from any person, corporation,
4 agent, representative, employee, or other
5 business entity a significant portion of whose
6 business consists of furnishing goods or
7 services to public utilities, affiliated
8 interests, or direct competitors of public
9 utilities or from any agent, representative,
10 attorney, employee, officer, owner, director
11 or partner of any such business entity or of
12 any public utility, affiliated interest, or
13 direct competitor of a public utility;
14 provided, however, that the receipt and
15 acceptance of any gifts, gratuities, or
16 entertainment after termination of service
17 with the commission whose cumulative value in
18 any one-year period is less than \$100 does not
19 constitute a violation of this Act.

20 (b) The prohibited activities of this section do not
21 include contracts for public utility products and
22 services or equipment for use of public utility
23 products when a member or employee of the
24 commission is acting as a consumer.

25 (c) A commissioner or employee of the commission may

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1 not directly or indirectly solicit or request from
2 or suggest or recommend to any public utility,
3 other entity regulated by this Act, or to any
4 affiliate, agent, representative, attorney,
5 employee,

6 officer, owner, director, or partner thereof the
7 appointment to any position or the employment in
8 any capacity of any person by such public utility
9 other entity regulated by this Act, or affiliated
10 interest.

11 (d) A public utility, other entity regulated by this
12 Act, affiliated interest, or direct competitor of a
13 public utility, or any person, corporation, firm,
14 association, or business that furnishes goods or
15 services to any public utility, other entity
16 regulated by this Act, affiliated interest, or
17 direct competitor of a public utility, or any
18 agent, representative, attorney, employee, officer,
19 owner, director, or partner of any public utility,
20 other entity regulated by this act, affiliated
21 interest or direct competitor of a public utility,
22 or any person, corporation, firm, association, or
23 business furnishing goods or services to any public
24 utility, other entity regulated by this Act,
25 affiliated interest, or direct competitor of a

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1 public utility may not give or offer to give any
2 gift, gratuity, employment, or entertainment
3 whatsoever to any commissioner, employee or counsel
4 of the commission except as allowed by Subdivision
5 (3) of Subsection (a) of this section, nor may any
6 such public utility, other entity regulated by this
7 Act, affiliated interest, or direct competitor of a
8 public utility or any such person, corporation,
9 firm, association, or business aid, abet, or
10 participate with any commissioner, employee, or
11 former employee of the commission in any activity
12 or conduct that would constitute a violation of
13 this subsection or Subdivision (3) of Subsection
14 (a) of this section.

15 (e) A commissioner may not seek nomination, election or
16 appointment to any other office of the State of New
17 Mexico or of the United States while he is a
18 commissioner. If any commissioner files for
19 nomination for or election to any
20 office of the State of New Mexico or of the United
21 States, his office as commissioner immediately
22 becomes vacant, and the governor shall appoint a
23 successor.

24 Sec. 1.024. PROHIBITION OF EMPLOYMENT OR REPRESENTATION

25 (a) A commissioner may not within two years, and an

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1 employee of the commission or its counsel may not,
2 within one year after his employment with the
3 commission has ceased, be employed by a public
4 utility or other entity regulated by this Act.

5 (b) During the time a commissioner or employee of the
6 commission is associated with the commission or at
7 any time after, the commissioner or employee may
8 not represent a person, corporation, or other
9 business entity before the commission or a court in
10 a matter which came before the Commission while
11 associated with the commission.

12 (c) The executive director or the executive director's
13 designee shall provide to members of the commission
14 and to agency employees as often as necessary
15 information regarding their qualifications for
16 office or employment under this Act and their
17 responsibilities under applicable laws relating to
18 standards of conduct for state officers and
19 employees.

20 Sec. 1.025. GROUND FOR REMOVAL; VALIDITY OF ACTIONS.

21 (a) It is a ground for removal from the commission if a
22 commissioner or employee:

23 (1) does not have at the time of election or
24 appointment the qualifications required by
25 Section 1.023 of this Act;

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- 1 (2) does not maintain during service on the
2 commission the qualifications required by
3 Section 1.023 of this Act;
- 4 (3) violates a prohibition established by Section
5 1.023, 1.024, or 1.025 of this Act;
- 6 (4) cannot discharge the person's duties for a
7 substantial part of the term for which the
8 person is elected or appointed because of
9 illness or disability; or
- 10 (5) is absent from more than 20% of the regularly
11 scheduled commission meetings that the
12 commissioner is eligible to attend during a
13 calendar year unless the absence is excused by
14 majority vote of the commission.
- 15 (b) The validity of an action of the commission is not
16 affected by the fact that it is taken when a ground
17 for removal of a commissioner exists.
- 18 (c) If the executive director has or receives knowledge
19 that a potential ground for removal of a
20 commissioner exists, the executive director shall
21 notify the chairman of the commission of the
22 potential ground. The chairman shall then notify
23 the governor and the attorney general that a
24 potential ground for removal exists. If the
25 potential ground for removal involves the chairman

1 of the commission, the executive director shall
2 notify two other commissioners who shall notify the
3 governor and the attorney general that a potential
4 ground for removal exists.

5 (d) Before a commissioner may assume his duties,
6 commissioner must complete at least one course of
7 the training program established under this
8 section.

9 (e) A training program established under this section
10 shall provide information to the member regarding:

- 11 (1) the enabling legislation that created the
12 commission and its policymaking body to which
13 the member is appointed to serve;
- 14 (2) the programs operated by the commission;
- 15 (3) the jurisdiction, role and functions of the
16 commission;
- 17 (4) the rules of the commission with an emphasis
18 on the rules that relate to disciplinary and
19 investigatory authority;
- 20 (5) the current budget for the commission;
- 21 (6) the results of the most recent formal audit of
22 the commission;
- 23 (7) the requirements of other applicable laws.
- 24 (8) the requirements of the conflict of interest
25 laws and other laws relating to public

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officials; and

(9) any applicable ethics policies adopted by the
commission or the New Mexico Ethics
Commission.

(10) the rules of procedure and evidence.

Sec. 1.026. VACANCIES. Whenever a vacancy in the office of a
commissioner occurs, it shall be filled by appointment by
the governor under the laws
applicable to other
appointments, except that the
governor may make interim
appointments to continue until
the vacancy can be filled in
the manner provided. Any
person appointed with the
advice and consent of the
senate to fill a vacancy shall
hold office during the
unexpired portion of the term.

Sec. 1.027. EMPLOYEES

(a) The commission shall employ an executive director, a
general counsel, and such officers and other employees as
it deems necessary to carry out the provisions of this
Act. All employees will receive such compensation as is
fixed by the legislature. The commission shall develop

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1 and implement policies that clearly define the respective
2 responsibilities of the commission and the staff of the
3 commission.

4 (b) The executive director is responsible for the day-to-day
5 operations of the commission and shall coordinate the
6 activities of division directors and other employees.

7 (c) The general counsel and his staff are responsible for the
8 gathering of information relating to all matters within
9 the authority of the commission in order to represent the
10 Commission.

11 (d) The duties of the general counsel include:

12 (1) accumulation of evidence and other information from
13 public utilities and from the accounting and
14 technical and other staffs of the commission and
15 from other sources for the purposes specified
16 herein;

17 (2) conduct of investigations of public utilities under
18 the jurisdiction of the commission;

19 (3) preparation of proposed changes in the rules of the
20 commission;

21 (4) preparation of recommendations that the commission
22 undertake investigation of any matter within its
23 authority;

24 (5) preparation of recommendations and report of such
25 staff for inclusion in the annual report of the

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commi ssi on;

(6) such other activities as are reasonably necessary to enable him to perform his duties.

(7) the general counsel shall not represent the staff or any party in any proceeding, but shall limit his function to rendering legal advice to the commi ssi on.

Sec. 1.028. DIVISIONS; DIVISION DIRECTORS.

(a) With the consent of the commission, the Executive Director shall appoint division directors. Appointments shall be made without reference to party affiliation and solely on the ground of fitness to perform the duties of their offices.

(b) Each director, with the consent of the chief of staff, shall employ such professional, technical and support staff as necessary to carry out the duties of his division. Employees shall be hired solely on the ground of their fitness to perform the job for which they are hired. Division staff are subject to the provisions of the Personnel Act.

(c) The commission shall include the following organizational units, called divisions:

A. the administrative services division;

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- 1 B. the consumer relations division;
- 2 C. the insurance division;
- 3 D. the legal division;
- 4 E. the transportation division; and
- 5 F. the utility division

6 Sec. 1.029. [NEW MATERIAL] ADMINISTRATIVE SERVICES DIVISION

7 CHIEF CLERK

8 (a) The Executive Director shall appoint a “chief
9 clerk” who shall record the judgments, rules,
10 orders and other proceedings of the commission and
11 make a complete index to the judgments, rules,
12 orders and other proceedings; issue and attest all
13 processes issuing from the commission and affix the
14 seal of the commission to them; and preserve the
15 seal and other property belonging to the
16 commission.

17 (b) The chief clerk shall direct the administrative
18 services division, including the “corporations
19 bureau” and the following functions:

- 20 (1) case docketing;
- 21 (2) budget and accounting;
- 22 (3) personnel services;
- 23 (4) procurement; and
- 24 (5) information systems services.

25 (c) The corporations bureau shall perform the functions

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1 of the corporation department of the former state
2 corporation commission.

3 Sec. 1.030. CONSUMER RELATIONS DIVISION.

4 (a) The consumer relations division shall:

- 5 (1) receive and investigate nondocketed consumer
6 complaints and assist consumers in resolving,
7 in a fair and timely manner, complaints
8 against a person under the authority of the
9 commission, including mediation and other
10 methods of alternative dispute resolution
11 provided, however, that assistance pursuant to
12 this paragraph does not include legal
13 representation of a private complainant in an
14 adjudicatory proceeding;
- 15 (2) work with the consumer protection division of
16 the attorney general's office, the governor's
17 constituent services office and other state
18 agencies as needed to ensure fair and timely
19 resolution of complaints;
- 20 (3) advise the commission on how to maximize
21 public input into commission proceedings,
22 including ways to eliminate language,
23 disability and other barriers;
- 24 (4) identify, research and advise the commission
25 on consumer issues;

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- 1 (5) assist the commission in the development and
2 implementation of consumer policies and
3 programs; and
4 (6) perform such other duties as prescribed by the
5 commission.

6 (b) All complaints received by the division with regard
7 to quality or quantity of service provided by a
8 regulated entity or its competitors shall be
9 recorded by the division for the purpose of
10 determining general concerns of consumers. A
11 report of consumer complaints and their status
12 shall be included in the commission's annual
13 report.

14 Sec. 1.031. INSURANCE DIVISION.

15 (a) The director of the insurance division is the
16 "superintendent of insurance" and shall have all
17 the powers and duties prescribed to him in the New
18 Mexico Insurance Code.

19 (b) The insurance division shall consist of such
20 bureaus as the superintendent of insurance
21 determines for orderly conduct of business.

22 Sec. 1.032. LEGAL DIVISION.

23 (a) The commission shall set minimum requirements for
24 the director of the legal division, including
25 membership in the New Mexico bar and administrative

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and supervisory experience.

(b) The legal division shall:

(1) provide legal counsel for the commission in matters not involving advice on contested proceedings before the commission; and

(2) provide legal counsel to all divisions, including the legal component of the staff that represents the public interest in matters before the commission.

Sec. 1.033. TRANSPORTATION DIVISION. The transportation division shall serve as staff to

the commission for the following functions, as provided by law:

- (a) motor carrier regulation and enforcement;
- (b) railroad safety enforcement;
- (c) pipeline safety; and
- (d) ambulance standards

Sec. 1.034. UTILITY DIVISION.

(a) The utility division shall serve as staff to the commission in the regulation of electric, natural gas, telecommunications and water and wastewater systems as provided by law.

(b) The commission shall set minimum educational and experience requirements for the director of the

1 utility division.

2 (c) The utility division shall represent the public
3 interest in utility matters before the commission
4 and may present testimony and cross-examine
5 witnesses.

6 (d) The utility division shall perform the functions of
7 the telecommunications department of the former
8 state corporation commission and staff functions,
9 not including advisory functions, of the former New
10 Mexico public utility commission.

11 (e) Utility division staff shall not have ex parte
12 communications with commissioners or a hearing
13 examiner assigned to a utility case.

14 Sec. 1.035. ADVISORY STAFF.

15 (a) The Executive Director may hire, with the consent
16 of the commission, advisory staff with expertise in
17 regulatory law, engineering, economics and other
18 professional or technical disciplines to advise the
19 commission on any matter before the commission.
20 The Executive Director may hire on a temporary,
21 term or contract basis such other experts or staff
22 as the commission requires for a particular case.

23 (b) Advisory staff shall:

- 24 (1) analyze case records;
25 (2) analyze recommended decision;

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- 1 (3) advise the commission on policy issues;
- 2 (4) assist the commission in the development of
- 3 rules;
- 4 (5) assist the commission in writing final orders;
- 5 and
- 6 (6) perform other duties as required by the chief
- 7 of staff.

8 Sec. 1.036. HEARING EXAMINERS.

- 9 (a) The commission may appoint a commissioner or a
- 10 hearing examiner to preside over any matter before
- 11 the commission, including rulemakings, adjudicatory
- 12 hearings and administrative matters.
- 13 (b) Except as provided in the New Mexico Insurance
- 14 Code, a hearing examiner shall provide the
- 15 commission with a recommended decision on the
- 16 matter assigned to him, including findings of fact
- 17 and conclusions of law. The recommended decision
- 18 shall be provided to the parties, and they may file
- 19 exceptions to the decision prior to the final
- 20 decision of the commission.

21 Sec. 1.037. PERSONNEL POLICIES

- 22 (a) The executive director or the executive director's
- 23 designee shall develop an intra-agency career ladder
- 24 program that addresses opportunities for mobility and
- 25 advancement for employees of the commission. The program

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1 shall require intra-agency posting of all positions
2 concurrently with any public posting. The executive
3 director or the executive director's designee shall
4 develop a system of annual performance evaluations that
5 are based on documented employee performance. All merit
6 pay for commission employees must be based on the system
7 established under this section.

8 (b) The executive director or the executive director's
9 designee shall prepare and maintain a written policy
10 statement to assure implementation of a program of equal
11 employment opportunity under which all personnel
12 transactions are made without regard to race, color,
13 disability, sex, religion, age, or national origin. The
14 policy statement must include:

- 15 (1) personnel policies that comply with the State
16 Personnel Office Act including policies relating to
17 recruitment, evaluation, selection, appointment,
18 training, and promotion of personnel;
- 19 (2) a comprehensive analysis of the commission
20 workforce that meets federal and state guidelines.
- 21 (3) procedures by which a determination can be made
22 about the extent of underuse in the commission
23 workforce of all persons for whom federal or state
24 guidelines encourage a more equitable balance; and
- 25 (4) reasonable methods to appropriately address the

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underuse.

(c) The policy statement required under Subsection (b) of this section must cover an annual period, be updated at least annually and reviewed by the State Personnel Office for compliance with Subsection (b)(1) of this section, and be filed with the governors office.

(d) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (c) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 1.038. SALARY. The annual salary of the commissioners shall be determined by the legislature.

Sec. 1.039. OFFICE; MEETINGS.

(a) The principal office of the commission shall be located in the City of Santa Fe, New Mexico and shall be open daily during the usual business hours, Saturdays, Sundays, and legal holidays excepted. The commission shall hold meetings at its office and at such other convenient places in the state as shall be expedient and necessary for the proper performance of its duties.

(b) The commission shall develop and implement policies that provide the public with a fair and reasonable

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1 opportunity to appear before the commission and to
2 speak on any issue under the jurisdiction of the
3 commission.

4 Sec. 1.040. SEAL. The commission shall have a seal bearing
5 the following inscription: "New Mexico Public Regulation
6 Commission." The seal
7 shall be affixed to all
8 records and
9 authentications of
10 copies of records and to
11 such other instruments
12 as the commission shall
13 direct. All courts of
14 the state shall take
15 judicial notice of said
16 seal.

17 Sec. 1.041. QUORUM A majority of the commissioners shall
18 constitute a quorum for the transaction of any business,
19 for the performance of any
20 duty, or for the exercise of
21 any power of the commission.
22 A vacancy or disqualification
23 does not prevent the remaining
24 commissioner or commissioners
25 from exercising all the powers

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of the commission.

Sec. 1.042. **ORDERS; TRANSCRIPT AND EXHIBITS; PUBLIC RECORDS.**

All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are based. The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Subtitle E of this title, Title II of this Act, and Title III of this Act shall be public records, subject to the terms of the Public Records Act.

Sec. 1.043. **ANNUAL REPORT.**

- (a) The commission shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must meet the reporting requirements established by law.
- (b) In the annual report issued in the year preceding the convening of each regular session of the legislature, the commission shall make such suggestions regarding modification and improvement of the commission's statutory authority and for the

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1 improvement of utility regulation in general as it
2 may deem appropriate for protecting and furthering
3 the interest of the public.

4 Sec. 1.044. INFORMATION; ACCESSIBILITY.

5 (a) The commission shall prepare information of public
6 interest describing the functions of the commission
7 and the commission's procedures by which complaints
8 are filed with an resolved by the commission. The
9 commission shall make the information available to
10 the public and appropriate state agencies.

11 (b) The commission by rule shall establish methods by
12 which consumers and service recipients are notified
13 of the name, mailing address, and telephone number
14 of the commission for the purpose of directing
15 complaints to the commission.

16 (c) The commission shall comply with federal and state
17 laws related to program and facility accessibility.
18 The commission shall also prepare and maintain a
19 written plan that describes how a person who does
20 not speak English can be provided reasonable access
21 to the commission's programs and services.

22 Sec. 1.045. ATTORNEY GENERAL TO REPRESENT COMMISSION. The

23 Attorney General of the State of New Mexico shall
24 represent the commission in all matters
25 before the state

1 courts, any court of the United States, and any federal
2 public utility regulatory commission.

3 Sec. 1.046. COMPENSATION OF COMMISSIONERS.

4 (a) Section 8-1-1 NMSA 1978 (being Laws 1971, Chapter
5 260, Section 1, as amended) is amended to read:

6 "8-1-1. COMPENSATION OF ELECTIVE STATE OFFICERS.

7 A. Annual compensation of elective state officers
8 shall be paid as follows:

9	governor	\$90,000
10	secretary of state	65,000
11	state auditor	65,000
12	state treasurer	65,000
13	attorney general	72,500
14	commissioner of public lands	72,500
15	[state corporation] <u>public regulation</u>	
16	<u>commissioner</u>	<u>[65,000]</u> 72,500

17 B. Any person succeeding to the office of
18 governor as provided in Article 5, Section 7
19 of the constitution of New Mexico shall
20 receive the salary of the office. Every
21 person serving as acting governor during the
22 incapacity or absence of the governor from the
23 state, other than the secretary of state,
24 shall receive one hundred fifty dollars (\$150)
25 as compensation for each day's service as

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acting governor.

C. All compensation under this section shall be paid from the general fund, except that the amount paid to the commissioner of public lands shall be paid from the state [land office] lands maintenance fund.”

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SUBTITLE C. OFFICE OF PUBLIC COUNSEL

Sec. 1.051. OFFICE OF PUBLIC COUNSEL

- (a) The independent Office of Public Counsel represents the interests of residential and small commercial consumers of products or services provided by public utilities' and other entities' regulated by this Act.
- (b) The chief executive of the office is the public counsel, hereinafter referred to as counselor. The counselor is appointed by the governor with the advice and consent of the senate to a two-year term that expires on February 1 of the final year of the term. Appointment of the counselor shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.
- (c) The counselor shall be a resident of New Mexico and admitted to the practice of law in this state who has demonstrated a strong commitment and involvement in efforts to safeguard the rights of the public and possesses the knowledge and experience necessary to practice effectively in commission proceedings.
- (d) A person is not eligible for appointment as counselor if the person or the person's spouse:
 - (1) is employed or participates in the management

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- 1 of a public utility or other entity regulated
2 by the commission or receiving funds from the
3 commission;
- 4 (2) owns or controls, directly or indirectly more
5 than a 10 percent interest or a pecuniary
6 interest with a value exceeding \$10,000 in:
- 7 (A) a business entity or other organization
8 regulated by the commission or receiving
9 funds from the commission or the office;
10 or
- 11 (B) any utility competitor, utility
12 supplier, or other entity affected by a
13 commission decision in a manner other
14 than by the setting of rates for that
15 class of customer;
- 16 (3) uses or receives a substantial amount of
17 tangible goods, services, or funds from the
18 commission or the office, other than
19 compensation or reimbursement authorized by
20 law for counselor or commission membership,
21 attendance, or expenses; or
- 22 (e) An officer, employee, or paid consultant of a
23 trade association in the field of public
24 utilities or other entities regulated by this
25 Act may not serve as counselor or be an

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1 employee of the office who is exempt from the
2 state's position classification plan or is
3 compensated at or above the amount prescribed
4 for the position. A person who is the spouse
5 of an officer, manager, or paid consultant of
6 a trade association in the field of public
7 utilities, or other entities regulated by this
8 Act, may not serve as counselor and may not be
9 an office employee who is exempt from the
10 state's position classification plan or is
11 compensated at or above the amount prescribed
12 for the position.

13 Sec. 1.0511. GROUND FOR REMOVAL

- 14 (a) It is a ground for removal from office if the
15 counselor:
- 16 (1) does not have at the time of appointment the
17 qualifications required by Section 1.051 of
18 this Act;
 - 19 (2) does not maintain during service as counselor
20 the qualifications required by Section 1.051
21 of this Act;
 - 22 (3) violates a prohibition established by Section
23 1.051 or 1.0512 of this Act; or
 - 24 (4) cannot discharge the counselor's duties for a
25 substantial part of the term for which the

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1 counselor is appointed because of illness or
2 disability.

3 (b) The validity of an action of the office is not
4 affected by the fact that it is taken when a ground
5 for removal of the counselor exists.

6 Sec. 1.052. PROHIBITION OF EMPLOYMENT OR REPRESENTATION.

7 (a) The counselor may not within two years and an
8 employee of the office may not within one year
9 after his employment with the office has ceased, be
10 employed by a public utility which was in the scope
11 of the counselor's or employee's official
12 responsibility while the counselor or employee was
13 associated with the office.

14 (b) During the time the counselor or an employee of the
15 office is associated with the office or at any time
16 after, the counselor or employee may not represent
17 a person, corporation, or other business entity
18 before the commission or a court in a matter in
19 which the counselor or employee was personally
20 involved while associated with the office or a
21 matter that was within the counselor's or
22 employee's official responsibility while the
23 counselor or employee was associated with the
24 office.

25 Sec. 1.053. INFORMATION; ACCESSIBILITY

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- (a) The office shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the office during the preceding fiscal year. The annual report must meet the reporting requirements applicable to financial reporting provided in the General Appropriations Act.
- (b) The office shall prepare information of public interest describing the functions of the office. The office shall make the information available to the public and appropriate state agencies.
- (c) The office shall comply with federal and state laws related to program and facility accessibility. The office shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the office's programs and services.

Sec. 1.054. INTEREST PROHIBITED. During the period of the counselor's employment and for a period of two years following the termination of employment, it shall be unlawful for any person employed as counselor to have a direct or indirect interest in any utility company

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regulated under this Act, to
provide legal services
directly or indirectly to or
be employed in any capacity by
a utility company regulated
under this Act, its parent, or
its subsidiary companies,
corporations, or cooperatives
or a utility competitor,
utility supplier, or other
entity affected in a manner
other than by the setting of
rates for that class of
customer; but such person may
otherwise engage in the
private practice of law after
the termination of employment
as counselor.

Sec. 1.055. **EMPLOYEES.**

(a) The counselor may employ such lawyers, economists,
engineers, consultants, statisticians, accountants,
clerical staff, and other employees as he or she
deems necessary to carry out the provisions of this
section. All employees shall receive such
compensation as is fixed by the legislature from

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1 the assessment imposed by Section 1.351 of this
2 Act. [Sec. 15A(c)]

3 (b) The counselor or the counselor's designee shall
4 develop an intra-agency career ladder program that
5 addresses opportunities for mobility and
6 advancement for employees within the office. The
7 program shall require intra-agency postings of all
8 positions concurrently with any public posting.
9 The counselor or the counselor's designee shall
10 develop a system of annual performance evaluations
11 that are based on documented employee performance.
12 All merit pay for office employees must be based on
13 the system established under this subsection.

14 (c) The counselor or the counselor's designee shall
15 prepare and maintain a written policy statement to
16 assure implementation of a program of equal
17 employment opportunity under which all personnel
18 transactions are made without regard to race,
19 color, disability, sex, religion, age, or national
20 origin. The policy statement must include:

21 (1) personnel policies that comply with Chapter
22 21, Labor Code, including policies relating to
23 recruitment, evaluation, selection,
24 appointment, training, and promotion of
25 personnel;

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- 1 (2) a comprehensive analysis of the office
2 workforce that meets federal and state
3 guidelines;
4 (3) procedures by which a determination can be
5 made about the extent of underuse in the
6 office workforce of all persons for whom
7 federal or state guidelines encourage a more
8 equitable balance; and
9 (4) reasonable methods to appropriately address
10 the underuse.

11 (d) The office shall provide to its employees, as often
12 as necessary, information regarding their
13 qualification for office or employment under this
14 Act and their
15 responsibilities under applicable laws relating to
16 standards of conduct for state officers or
17 employees.

18 Sec. 1.056. POWERS AND DUTIES.

- 19 (a) The Office of Public Counsel:
20 (1) shall assess the impact of utility rate
21 changes and other regulatory actions of the
22 commission on residential consumers in the
23 State of New Mexico and shall be an advocate
24 in its own name of positions most advantageous
25 to a substantial number of such consumers as

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- 1 determined by the counselor;
- 2 (2) may appear or intervene as a matter of right
- 3 as a party or otherwise on behalf of
- 4 residential consumers, as a class, in all
- 5 proceedings before the commission;
- 6 (3) may appear or intervene as a matter of right
- 7 as a party or otherwise on behalf of small
- 8 commercial consumers, as a class, in all
- 9 proceedings where it is deemed by the
- 10 counselor that small commercial consumers are
- 11 in need of representation;
- 12 (4) may initiate or intervene as a matter of right
- 13 or otherwise appear in any judicial
- 14 proceedings involving or arising out of any
- 15 action taken by an administrative agency in a
- 16 proceeding in which the counselor was
- 17 authorized to appear;
- 18 (5) may have access as any party to all records
- 19 gathered by the commission under the authority
- 20 of Subsection (a) of Section 1.203 of this
- 21 Act;
- 22 (6) may obtain discovery of any non privileged
- 23 matter which is relevant to the subject matter
- 24 involved in any proceeding or petition before
- 25 the commission;

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1 (7) may represent individual residential and small
2 commercial consumers with respect to their
3 disputed complaints concerning utility
4 services and other services or products of
5 other entities regulated by the commission
6 which are unresolved before the commission;
7 and

8 (8) may recommend legislation to the legislature
9 which in its judgment would positively affect
10 the interests of residential and small
11 commercial consumers.

12 (b) Nothing in this section shall be construed as in
13 any way limiting the authority of the commission to
14 represent residential or small commercial
15 consumers.

16 (c) The appearance of the counselor in any proceedings
17 in no way precludes the appearance of other parties
18 on behalf of residential ratepayers or small
19 commercial consumers. The counselor may not be
20 grouped with any other parties.
21

22 SUBTITLE D. COMMISSION JURISDICTION AND DUTIES

23 Sec. 1.101. GENERAL POWER; RULES; HEARINGS.

24 (a) The commission has the general power to regulate
25 and supervise the business of every public utility

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1 and other entities regulated by the Commission
2 within its jurisdiction and to do all things,
3 whether specifically designated in this Act or
4 implied herein, necessary and convenient to the
5 exercise of this power and jurisdiction.

6 (b) The commission shall enforce the rules of procedure
7 and rules of evidence as applicable to the District
8 courts in a non-jury trial.

9 (c) The commission shall call and hold hearings,
10 enforce requests for documents, oral depositions,
11 and other pretrial discovery, administer oaths,
12 receive evidence at hearings, issue subpoenas to
13 compel the attendance of witnesses and the
14 production of papers and documents, and make
15 findings of fact and conclusions of law in
16 connection with all decisions in administering the
17 provisions of this Act or the rules, orders, or
18 other actions of the commission.

19 (d) Hearings in contested cases shall be conducted by
20 the State Office of Administrative Hearings which
21 shall in all respects, function independently from
22 the commission. The commission may delegate to the
23 utility division of the State office of
24 Administrative Hearings, the authority to make a
25 final decision and to issue findings of fact,

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1 conclusions of law, and other necessary orders in a
2 proceeding in which there is no contested issue of
3 fact or law. The commission by rule shall define
4 the procedures by which its delegates final
5 decision making authority authorized by this
6 section. For review purposes the final decision of
7 the administrative law judge has the same effect as
8 a final decision of the commission unless two
9 commissioners request a formal review of the
10 decision by the commission.

11 Sec. 1.102. PROCEDURES FOR ADOPTION OF RULES.

12 (a) The commission shall on or before January 1, 2000,
13 after notice and hearing, adopt procedural and
14 substantive rules as are lawful and necessary to
15 implement the duties and protect the rights of the
16 commission and those who are regulated by the
17 commission. Unless otherwise provided by law, no
18 rule affecting a person outside the commission
19 shall be adopted, amended or repealed except after
20 public notice and public hearing before the
21 commission or a hearing examiner designated by the
22 commission.

23 (b) Notice of the subject matter of the rule, the
24 action proposed to be taken, the manner in which
25 interested persons may present their views and the

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1 method by which copies of the proposed rule,
2 amendment or repealing provisions may be obtained
3 shall be published at least once at least thirty
4 days prior to the hearing date in a newspaper of
5 general circulation and mailed at least thirty days
6 prior to

7 the hearing date to all persons who have made a
8 written request for advance notice. Additional
9 notice may be made by posting on the Internet or by
10 using other alternative methods of informing
11 interested persons.

12 (c) If the commission finds that immediate adoption,
13 amendment or suspension of a rule is necessary for
14 the preservation of the public peace, health,
15 safety or general welfare, the commission may
16 dispense with notice and public hearing and adopt,
17 amend or suspend the rule as an emergency. The
18 commission's finding of why an emergency exists
19 shall be incorporated in the emergency rule,
20 amendment or suspension filed with the state
21 records center. Upon adoption of an emergency rule
22 that is intended to remain in effect for longer
23 than sixty days, notice shall be given within seven
24 days of filing the rule as required in this section
25 for proposed rules.

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1 (d) The commission shall issue a rule within eighteen
2 months following the publication of that proposed
3 rule or it shall be deemed to be withdrawn. The
4 commission may propose the same or revised rule in
5 a subsequent rulemaking.

6 (e) All rules shall be filed in accordance with the
7 State Rules Act and shall be effective fifteen days
8 after filing unless a longer time is provided by
9 the rule.

10 Sec. 1.103. RECORD OF PROCEEDINGS. Unless otherwise provided
11 by law, oral proceedings

12 before the commission shall be taken by any means that
13 provides a full and complete record, including tape
14 recording or stenography. The commission by rule shall
15 determine when tape recordings are transcribed. A party
16 to a proceeding may request a copy of a tape recording or
17 a written transcript when one is provided. The
18 commission may charge a reasonable fee for a copy of the
19 proceeding. Copy costs shall be determined by the
20 commission by rule.

21 Sec. 1.104. EX PARTE COMMUNICATIONS.

22 (a) A commissioner shall not initiate, permit or
23 consider a communication directly or indirectly
24 with a party or his representative outside the
25 presence of the other parties concerning a pending

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1 rulemaking been closed or a pending adjudication.
2 This shall not prohibit any interested persons from
3 filing written comments in rulemaking proceedings
4 as long as copies are provided to all parties.

5 (b) A hearing examiner shall not initiate, permit or
6 consider a communication directly or indirectly
7 with a party or his representative outside the
8 presence of the other parties concerning a pending
9 rulemaking or adjudication.

10 (c) Notwithstanding the provisions of Subsections (a)
11 and (b) of this section, the following ex parte
12 communications are permitted:

13 (1) where circumstances require, ex parte
14 communications for purely procedural or
15 administrative purposes or emergencies that do
16 not deal with substantive matters or issues on
17 the merits are allowed if the commissioner or
18 hearing examiner reasonably believes that no
19 party will gain an advantage as a result of
20 the ex parte communication and the
21 commissioner or hearing examiner makes
22 provision to promptly notify all other parties
23 of the substance of the ex parte
24 communication.

25 (2) a commissioner may consult with another

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1 commissioner or with advisory staff whose
2 function is to advise the commission in
3 carrying out the commissioner's rulemaking or
4 adjudicative responsibilities;

5 (d) A commissioner or hearing examiner who receives or
6 who makes or causes to be made a communication
7 prohibited by this section shall disclose it to all
8 parties and give other parties an opportunity to
9 respond.

10 (e) Upon receipt of a communication knowingly made or
11 caused to be made by a party to a commissioner or
12 hearing examiner in violation of this section, the
13 commissioner or hearing examiner may, to the extent
14 consistent with the interests of justice and the
15 policy of the underlying statutes, require the
16 party to show cause why his claim, defense or other
17 interest in the proceeding should not be dismissed,
18 denied or disregarded on account of the violation
19 of this section.

20 Sec. 1.105. RECUSAL OF COMMISSIONER OR HEARING EXAMINER.

21 (a) A commissioner or hearing examiner shall recuse
22 himself in any adjudicatory proceeding in which he
23 is unable to make a fair and impartial decision or
24 in which there is doubt about whether he can make a
25 fair and impartial decision, including;

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- 1 (1) when he has a personal bias or prejudice
2 concerning a party or its representative or
3 has prejudged a disputed evidentiary fact
4 involved in a proceeding prior to hearing.
5 For the purpose of this paragraph, “personal
6 bias or prejudice” means a predisposition
7 toward a person based on a previous or ongoing
8 relationship, including a professional,
9 personal, familial or other intimate
10 relationship, that sways judgment and renders
11 the commissioner or hearing examiner unable to
12 exercise his functions impartially;
- 13 (2) when he has a pecuniary interest in the
14 outcome of the proceeding other than as a
15 customer or a party;
- 16 (3) when in previous employment he served as an
17 attorney, adviser, consultant or witness in
18 the matter in controversy; or
- 19 (4) when, as a candidate for office, he announced
20 how he would rule on the adjudicatory
21 proceeding or a factual issue in the
22 adjudicatory proceeding.
- 23 (b) If a commissioner or hearing examiner fails to
24 recuse himself when it appears that grounds exist,
25 a party shall promptly notify the commissioner or

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1 hearing examiner of the apparent grounds for
2 recusal. If the commissioner or hearing examiner
3 declines to recuse himself upon request of a party,
4 he shall provide full disclosure on the record of
5 all facts in support of his refusal to recuse
6 himself.

7 Sec. 1.106. AUDITS.

8 (a) The commission shall inquire into the management of
9 the business of all entities under its
10 jurisdiction, shall keep itself informed as to the
11 manner and method in which the management and
12 business is conducted, and shall obtain from any
13 such entity all necessary information to enable the
14 commission to perform management audits.

15 (b) The commission may audit each entity under the
16 jurisdiction of the commission. Six months after
17 any audit, the entity shall report to the
18 commission on the status of the implementation of
19 the recommendations of the audit and shall file
20 subsequent reports at such times as the commission
21 deems appropriate.

22 Sec. 1.107. FRANCHISES. Nothing in this Act shall be
23 construed as in any way limiting the rights and powers
24 of a municipality
25 to grant or refuse

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franchises to use
the streets, alleys
or other public
properties within
its limits and to
make charges for
the use thereof,
but a provision of
any franchise
agreement may not
limit or interfere
with any regulatory
power conferred on
the commission by
this Act.

Sec. 1.108. SETTLEMENTS.

- (a) The commission by rule shall adopt procedures governing the use of settlements to resolve contested cases, provided that all parties agree to a settlement.
- (b) The rules shall ensure that:
 - (1) each party retains the right to:
 - (A) have a full hearing before the commission on issues that remain in dispute; and

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- 1 (B) judicial review of issues that remain in
- 2 dispute;
- 3 (2) an issue of fact raised by a nonsettling party
- 4 cannot be waived by a settlement or
- 5 stipulation of the other parties; and
- 6 (3) the nonsettling party may use the issue of
- 7 fact raised by that party as the basis for
- 8 judicial review.

9 SUBTITLE E. RECORDS, REPORTS, INSPECTIONS, AND SERVICES
10 Sec. 1.201. RECORDS OF PUBLIC UTILITY.

- 11 (a) Every public utility shall keep and render to the
- 12 regulatory authority in the manner and form
- 13 prescribed by the commission uniform accounts of
- 14 all business transacted.
- 15 (b) The commission may also prescribe forms of books,
- 16 accounts, records, and memoranda to be kept by such
- 17 public utilities, including the books, accounts,
- 18 records, and memoranda of the rendition of and
- 19 capacity for service as well as the receipts and
- 20 expenditures of money, and any other forms, records
- 21 and memoranda which in the judgment of the
- 22 commission may be necessary to carry out any of the
- 23 provisions of this Act.
- 24 (c) In the case of any public utility subject to
- 25 regulations by a federal regulatory agency,

1 compliance with the system of accounts prescribed
2 for the particular class of utilities by such
3 agency may be deemed a sufficient compliance with
4 the system prescribed by the commission; provided,
5 however, that the commission may prescribe forms of
6 books, accounts, records, and memoranda covering
7 information in addition to those required by the
8 federal agency. The system of accounts and the
9 forms of books, accounts, records, and memoranda
10 prescribed by the commission for a public utility
11 or class or utilities may not conflict or be
12 inconsistent with the systems and forms established
13 by a federal agency for that public utility or
14 class of utilities.

15 (d) Every public utility is required to keep and render
16 its books, accounts, records, and memoranda
17 accurately and faithfully in the manner and form
18 prescribed by the

19 commission and to comply with all directions of
20 the regulatory authority relating to such books,
21 accounts, records and memoranda. The regulatory
22 authority may require the examination and audit of
23 all accounts.

24 (e) For the purposes of this section, "public utility"
25 includes "municipally owned utility." [Secs.

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27(a), (d), (f)]

Sec. 1. 202. RECORDS OF OTHER REGULATED ENTITIES

- (a) Every regulated entity shall maintain its records of account and business activity in accordance with regularly accepted accounting principles and in an accurate and faithful manner which will truly and fully describe such entity's actual business activity.
- (b) In any proceeding involving a regulated entity, it shall, upon order of the administrative law judge or commission, deliver to the commission its records of account and business activity by year. The judge or commission may enter such reasonable protective orders as are necessary to protect the privacy of the regulated entity from undue public disclosure, which is or may probably be harmful to the entity.

Sec. 1. 203. POWERS OF COMMISSION.

- (a) The commission shall have the power to:
 - (1) require that public utilities and other regulated entities report to it such information relating to themselves and to transactions between themselves and affiliated interests both within and without the State of

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New Mexico to the extent that those transactions are or may be subject to the jurisdiction of the commission;

- (2) establish forms for all reports;
- (3) determine the time for reports and the frequency with which any reports are to be made;
- (4) require that any reports be made under oath;
- (5) require that a copy of any contract or arrangement between any public utility, any other regulated entity, and any affiliated interest be filed with it. It may require any such contract or arrangement not in writing to be reduced to writing and filed with it;
- (6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and
- (7) require that a copy of annual reports showing all payments of compensation (other than salary or wages subject to the withholding of federal income tax) with respect to legal, administrative, or legislative matters in New Mexico or for representation before the New Mexico Legislature or any governmental agency

1 or body be filed with it.

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4 Sec. 1. 204. INSPECTIONS; EXAMINATION UNDER OATH; COMPELLING
5 PRODUCTION OF RECORDS; INQUIRY INTO MANAGEMENT AND
6 AFFAIRS.

7 (a) The commission, and when authorized by it, its
8 counsel, agents, and employees, shall have the
9 right, at reasonable times and for reasonable
10 purposes, to inspect and obtain copies of the
11 papers, books, accounts, documents, and other
12 business records and to inspect the plant,
13 equipment, and other property of any public utility
14 or other regulated entity within its jurisdiction.
15 The regulatory authority may examine under oath, or
16 it may authorize the person conducting such
17 investigation
18 to examine under oath, any officer, agent, or
19 employee of any public utility, or other regulated
20 entity, in connection with such investigation. The
21 regulatory authority may require, by order or
22 subpoena served on any public utility, or other
23 regulated entity, the production within this state
24 at the time and place it may designate of any books,
25 accounts, papers, or records kept by the public

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1 utility or other regulated entity outside the state
2 or verified copies in lieu thereof if the
3 commission so orders. Any public utility or other
4 regulated entity failing or refusing to comply with
5 any such order or subpoena is in violation of this
6 Act.

7 (b) A member, agent, or employee of the commission may
8 enter the premises occupied by a public utility or
9 other regulated entity to make inspections,
10 examinations, and tests and to exercise any
11 authority provided by this Act. A member, agent,
12 or employee of the commission may act under this
13 section only during reasonable hours.

14 Sec. 1.205. OFFICE OF PUBLIC UTILITY; RECORDS; REMOVAL FROM
15 STATE. Every public utility shall have an office in a
16 county of this state in which its property or
17 some part thereof is located in which it shall
18 keep all books, accounts, records, and
19 memoranda required by the commission to be
20 kept in the state. Books, accounts, records,
21 or memoranda required by the regulatory
22 authority to be kept in the state may not be
23 removed from the state, except on conditions
24 prescribed by the commission.

25 Sec. 1.206. COMMUNICATIONS BY PUBLIC UTILITIES WITH

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COMMISSION

REGULATIONS AND RECORDS

- (a) The commission shall prescribe regulations governing all communications by public utilities, other entities regulated by this Act, their affiliates, and their representatives with the commission.
- (b) Such records shall contain the name of the person contacting the commission, the name of the business entities represented a description of the subject matter of the communication, and the action, if any, requested by the public utility, entity, affiliate or representative. These records shall be available to the public on a monthly basis.
- (c) At no time may any employee, agent or attorney of a public utility or other regulated entity contact or discuss with any commissioner, commission employee or administrative law judge any fact, law or other matter which is directly or indirectly related to any issue expected to or coming before the commission. Without limitation, public utilities and other regulated entities shall not cause or permit any officer, employee, agent or attorney to engage in any discussion of any issue expected to or coming before the commission in any contested or

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1 rulemaking proceeding.

2 Sec. 1.207. INTERFERENCE WITH TERMS OR CONDITIONS OF

3 EMPLOYMENT. The commission may not interfere with
4 employee wages and benefits, working
5 conditions, or other terms or conditions
6 of employment that are the product of a
7 collective bargaining agreement
8 recognized under federal law. Employee
9 wage rates and benefit levels that are
10 the product of such bargaining shall be
11 presumed reasonable. [Sec. 41B]

13 SUBTITLE F. SALE OF PROPERTY AND MERGERS

14 Sec. 1.251. REPORT OF SALE, MERGER, ETC; INVESTIGATION;
15 DISALLOWANCE OF TRANSACTION.

16 (a) A public utility may not sell, acquire, lease or
17 rent any plant as an operating unit or system in
18 this state for a total consideration in excess of
19 \$100,000 or merge or consolidate with another
20 public utility operating in this state unless the
21 public utility reports such transaction to the
22 commission within a reasonable time.

23 (b) All transactions involving the sale of 50 percent
24 or more of the stock of a public utility shall also
25 be reported to the commission within a reasonable

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1 time. On the filing of a report with the
2 commission, the commission shall investigate the
3 same with or without public hearing to determine
4 whether the action is consistent with the public
5 interest. In reaching its determination, the
6 commission shall take into consideration the
7 reasonable value of the property, facilities, or
8 securities to be acquired, disposed of, merged,
9 transferred, or consolidated and whether such a
10 transaction will adversely affect the health or
11 safety of customers or employees, result in the
12 transfer of jobs of New Mexico citizens to workers
13 domiciled outside the State of New Mexico, or
14 result in the decline or service, that the public
15 utility will receive consideration equal to the
16 reasonable value of the assets when it sells,
17 leases, or transfers assets, and that the
18 transaction is consistent with the public interest.

- 19 (c) If the commission finds that such transactions are
20 not in the public interest, the commission shall
21 take the effect of the transaction into
22 consideration in the
23 ratemaking proceedings and disallow the effect of
24 such transaction if it will unreasonably affect
25 rates or service.

1 (d) The provisions of this section may not be construed
2 as being applicable to the purchase of units of
3 property for replacement or to the addition to the
4 facilities of the public utility by construction.

5 Sec. 1.252. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC

6 UTILITY: REPORT. A public utility may not purchase voting
7 stock in another public utility doing
8 business in this state unless the
9 utility reports such purchase to the
10 commission.

11 Sec. 1.253. LOANS TO STOCKHOLDERS: REPORT. A public utility
12 may not loan money, stocks, bonds, notes, or other evidences
13 of indebtedness to any corporation or
14 person owning or holding directly or
15 indirectly any stock of the public
16 utility unless the public utility
17 reports the transaction to the
18 commission within a reasonable time.

19
20 SUBTITLE G. RELATIONS WITH AFFILIATED INTERESTS

21 Sec. 1.271. JURISDICTION OVER AFFILIATED INTEREST. The
22 commission shall have jurisdiction over affiliated
23 interests having transactions with
24 public utilities or other regulated
25 entities under the jurisdiction of

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1 the commission to the extent of
2 access to all accounts and records
3 of such affiliated interests
4 relating to such transactions,
5 including but in no way limited to
6 accounts and records of joint or
7 general expenses, any portion of
8 which may be applicable to such
9 transactions.

10 Sec. 1.272. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING

11 SECURITIES. The commission may require the disclosure of
12 the identity and respective interests of
13 every owner of any substantial interest
14 in the voting securities of any public
15 utility, other

16 regulated or its affiliated interest. One percent or
17 more in a substantial interest within the meaning of this
18 section.

19
20 SUBTITLE H. JUDICIAL REVIEW

21 Sec. 1.301. RIGHT TO JUDICIAL REVIEW; EVIDENCE; COMMISSION AS

22 PARTY DEFENDANT. Any part to a proceeding before the
23 commission is entitled to judicial review. The
24 court conducting such review shall upon motion
25 conduct such review de novo or under the

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1 substantial evidence rule as the court may fairly
2 determine. The commission shall be a party
3 defendant in any such proceeding, represented by
4 the attorney general.

5 Sec. 1. 302. COSTS AND ATTORNEYS' FEES.

6 (a) Any party represented by counsel who alleges that
7 existing rates are excessive or that those
8 prescribed by the commission are excessive and who
9 is a prevailing party in proceedings for review of
10 a commission order or decision may in the same
11 action recover against the defendant utility; or
12 that the conduct of a public utility or other
13 regulated entity justifies the awarding of fees or
14 costs and may order that such party shall receive
15 reasonable fees for attorneys and expert witnesses
16 and other costs for its efforts before the
17 commission and the court(s) the amount of such
18 attorneys' fees to be fixed by the court.

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20
21 SUBTITLE I. VIOLATIONS AND ENFORCEMENT

22 Sec. 1. 321. ACTION TO ENJOIN OR REQUIRE COMPLIANCE.

23 Whenever it appears to the commission that any public
24 utility or any other regulated entity is engaged in or is
25 about to engage in any act in violation of this Act or of

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1 any order, rule, or regulation of the commission entered
2 or adopted under the provisions of this Act or that any
3 public utility or regulated entity is failing to comply
4 with the provisions of this Act or with any such rule,
5 regulation, or order, the attorney general on request of
6 the commission, in addition to any other remedies
7 provided herein, shall bring an action in a court of
8 competent jurisdiction in the name of and on behalf of
9 the commission against such public utility or other
10 regulated entity to enjoin the commencement or
11 continuation of any such act or to require compliance
12 with such Act, rule, regulation, or order.

13 Sec. 1.3215. ADMINISTRATIVE PENALTY.

14 (a) The commission may impose an administrative penalty
15 against a person or entity regulated under this Act
16 who violates this Act or a rule or order adopted
17 under this Act.

18 (b) The penalty for a violation may be in amount not to
19 exceed \$50,000. Each day a violation continues or
20 occurs is a separate violation for purposes of
21 imposing a penalty.

22 (c) The amount of the penalty shall be based on:

- 23 (1) the seriousness of the violation, including
24 the nature, circumstances, extent, and gravity
25 of any prohibited acts, and the hazard or

- 1 potential hazard created to the health,
2 safety, or economic welfare of the public;
- 3 (2) the economic harm to property or the
4 environment caused by the violation;
- 5 (3) the history of previous violations;
- 6 (4) the amount necessary to deter future
7 violations;
- 8 (5) efforts to correct the violation; and
- 9 (6) any other matter that justice may require.
- 10 (d) If the executive director determines that a
11 violation has occurred, the executive director may
12 issue to the commission a report that states the
13 facts on which the determination is based and the
14 director's recommendation on the imposition of a
15 penalty, including a recommendations on the amount
16 of the penalty.
- 17 (e) Within 14 days after the date the report is issued,
18 the executive director shall give written notice of
19 the report to the person or entity. The notice may
20 be given by certified mail. The notice must
21 include a brief summary of the alleged violation
22 and a statement of the amount of the recommended
23 penalty and must inform the person that the person
24 has a right to a hearing on the occurrence of the
25 violation, the amount of the penalty, or both the

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1 occurrence of the violation and the amount of the
2 penalty. Before any penalty may be assessed under
3 this section, the person against whom the penalty
4 may be assessed shall be given 30 days after
5 receiving from the executive director the notice of
6 the report summarizing the alleged violation
7 pursuant to this subsection in which to cure the
8 violation and the person must fail to cure the
9 alleged violation within the 30-day period. The
10 person or entity against whom the penalty may be
11 assessed who claims to have cured the alleged
12 violation shall have the burden of proving to the
13 commission that the alleged violation was cured and
14 was accidental or inadvertent.

15 (f) Within 20 days after the date the person or entity
16 receives the notice, the person or entity in
17 writing may accept the determination and
18 recommended penalty of the executive director or
19 may make a written request for a hearing on the
20 occurrence
21 of the violation, the amount of the penalty, or
22 both the occurrence of the violation and the amount
23 of the penalty.

24 (g) If the person or entity accepts the determination
25 and recommended penalty of the executive director,

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1 the commission by order shall approve the
2 determination and impose the recommended penalty.

3 (h) If the person or entity requests a hearing or fails
4 to respond timely to the notice, the executive
5 director shall set a hearing and give notice of the
6 hearing to the person. The hearing shall be held
7 by an administrative law judge of the State Office
8 of Administrative Hearings. The administrative law
9 judge shall make findings of fact and conclusions
10 of law and promptly issue to the commission a
11 proposal for a decision about the occurrence of the
12 violation and the amount of a proposed penalty.
13 Based on the findings of fact, conclusions of law,
14 and proposal for a decision, the commission by
15 order may find that a violation has occurred and
16 impose a penalty or may find that no violation
17 occurred.

18 (i) The notice of the commission's order given to the
19 person or entity must include a statement of the
20 right of the person to judicial review of the
21 order.

22 (j) Within 30 days after the date the commission's
23 order is final the person or entity shall:

24 (1) pay the amount of the penalty;

25 (2) pay the amount of the penalty and file a

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- petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.
- (k) Within the 30-day period, a person or entity who acts under Subsection (j)(3) of this section may:
- (1) stay enforcement of the penalty by:
 - (A) paying the amount of the penalty to the court for placement in an escrow account; or
 - (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commission's order is final; or
 - (2) request the court to stay enforcement of the penalty by:
 - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of

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- 1 (o) If the court sustains the occurrence of the
2 violation, the court may uphold or reduce the
3 amount of the penalty and order the person or
4 entity to pay the full or reduced amount of the
5 penalty. If the court does not sustain the
6 occurrence of the violation, the court shall order
7 that no penalty is owed.
- 8 (p) When the judgment of the court becomes final, the
9 court shall proceed under this subsection. If the
10 person or entity paid the amount of the penalty and
11 if that amount is reduced or is not upheld by the
12 court, the court shall order that the appropriate
13 amount plus accrued interest be remitted to the
14 person or entity. The rate of the interest is the
15 rate charged on loans to depository institutions by
16 the New York Federal Reserve Bank, and the interest
17 shall be paid for the period beginning on the date
18 the penalty was paid and ending on the date the
19 penalty is remitted. If the person or entity gave
20 a supersedeas bond and if the amount of the penalty
21 is not upheld by the court, the court shall order
22 the release of the bond. If the person or entity
23 gave a supersedeas bond and if the amount of the
24 penalty is
25 reduced, the court shall order the release of the

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1 bond after the person or entity pays the amount.

2 (q) A penalty collected under this section shall be
3 remitted to the comptroller for deposit in the
4 general revenue fund.

5 Sec. 1. 322. PENALTY AGAINST PUBLIC UTILITY, REGULATED ENTITY
6 OR
7 AFFILIATED INTEREST.

8 (a) Any public utility, regulated entity or affiliated
9 interest that knowingly violates a provision of
10 this Act, fails to perform a duty imposed on it, or
11 fails, neglects, or refuses to obey an order, rule,
12 regulation, direction, or requirement of the
13 commission or decree or judgment of a court shall
14 be subject to a civil penalty of not less than
15 \$1,000 nor more than \$200,000 for each offense.

16 (b) A public utility, regulated entity or affiliated
17 interest commits a separate offense each day it
18 continues to violate the provisions of Subsection
19 (a) of this section.

20 (c) The attorney general shall institute suit on his
21 own initiative or at the request of, in the name
22 of, and on behalf of the commission in a court of
23 competent jurisdiction to recover the penalty under
24 this section.

25 Sec. 1. 323. PENALTY FOR VIOLATING SECTION 1.024 OF THIS ACT.

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1 (a) Any commissioner or commission employee or any
2 officer or director of a public utility, other
3 regulated entity or affiliated interest shall be
4 subject to a civil penalty of \$1,000 for each and
5 every knowing violation of Section 1.024 of this
6 Act, such penalty to be recovered in a suit filed
7 in a court of competent jurisdiction by the
8 attorney general on his own initiative or at the
9 request of, in the name of, and on behalf of the
10 commission.

11 (b) Any commissioner or employee of the commission
12 found in any action by a preponderance of the
13 evidence to have violated any provision of Section
14 1.024 of this Act shall be removed from his office
15 or employment.

16
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18 Sec. 1.324. PERSONAL PENALTY.

19 (a) Except as provided by Section 3.301 of this Act,
20 any person or persons who willfully and knowingly
21 violates the provisions of this Act shall be guilty
22 of a third degree felony.

23 (b) All penalties accruing under this Act shall be
24 cumulative, and a suit for the recovery of any
25 penalty does not bar or affect the recovery of any

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1 other penalty or bar any criminal prosecution
2 against any public utility or other regulated
3 entity or any officer, director, agent, or employee
4 thereof or any other corporation or person.

5 Section 1. 325. CONTEMPT PROCEEDINGS. If any person or entity
6 fails to comply with any
7 lawful order of the commission or with any subpoena or
8 subpoena duces tecum or if any witness refuses to testify
9 about any matter on which he may be lawfully
10 interrogated, the commission may apply to any court of
11 competent jurisdiction to compel obedience by proceedings
12 for contempt.

13 Sec. 1. 326. DISPOSITION OF FINES AND PENALTIES. Fines and
14 penalties collected under this Act in other than
15 criminal proceedings shall be
16 paid to the commission and
17 paid by the commission to the
18 state treasury to be placed in
19 the general revenue fund.
20 [Sec. 76]

21 Sec. 1. 327. VENUE. Suits for injunction or penalties under
22 the provisions of this Act may be brought in Santa Fe
23 County, in any county
24 where such violation is
25 alleged to have

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occurred, or in the
county of residence of
any defendant.

SUBTITLE J. COMMISSION FINANCING

Sec. 1. 351. ASSESSMENTS UPON PUBLIC UTILITIES AND OTHER
REGULATED

ENTITIES.

(a) An assessment is imposed on each public utility and other regulated entities within the commission's jurisdiction, equal to one-sixth of one percent of each one's gross receipts from rates or prices charged the ultimate consumers in the state for the purpose of defraying the costs and expenses incurred in the administration of this Act.

(b) The legislature may adjust this assessment to provide a level of income sufficient to fund the commission and the office of public counsel.

Sec. 1. 352. PAYMENT DATES; DELINQUENCY.

(a) All assessments shall be due on August 15 of each year. Any entity may instead make quarterly payments due on August 15, November 15, February 15, and May 15 of each year.

(b) There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late

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1 payment. Fees delinquent for more than 30 days
2 shall draw interest at the rate of 12 percent per
3 annum on the assessment and penalty due.

4 Sec. 1. 353. COLLECTION AND PAYMENT INTO GENERAL REVENUE FUND.

5 (a) All fees, penalties, and interest paid under the
6 provisions of Sections 1. 351 and 1. 352 of this Act
7 shall be collected by the comptroller of public
8 accounts and paid into the general revenue fund.

9 Sec. 1. 354. ACCOUNTING RECORDS; AUDIT. The commission shall
10 keep such accounting records as required by the
11 comptroller. The financial
12 transactions of the commission are
13 subject to audit by the state
14 auditor.

15 Sec. 1. 355. APPROVAL OF BUDGET. The budget of the commission
16 shall be subject to legislative approval.

17
18 SUBTITLE K. MISCELLANEOUS PROVISIONS

19 Sec. 1. 401. COMPLAINT BY ANY AFFECTED PERSON.

20 (a) Any affected person may complain to the regulatory
21 authority in writing setting forth any act or thing
22 done or omitted to be done by any public utility or
23 other regulated entity in violation or claimed
24 violation of any law which the commission has
25 jurisdiction to administer or of any order,

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1 ordinance, rule, or regulation of the commission.
2 The commission shall keep information about each
3 complaint filed with the commission. The
4 commission shall retain the information for a
5 reasonable period. The information shall include:
6 (1) the date the complaint is received;
7 (2) the name of the complainant;
8 (3) the subject matter of the complaint;
9 (4) a record of all persons contacted in relation
10 to the complaint;
11 (5) a summary of the results of the review or
12 investigation of the complaint; and
13 (6) for complaints for which the commission took
14 no action, an explanation of the reason the
15 complaint was closed without action.

16 (b) The commission shall keep a file about each written
17 complaint filed with the commission that the
18 commission has authority to resolve. The
19 commission shall provide to the person filing the
20 complaint and to the persons or entities complained
21 about the commission's policies and procedures
22 pertaining to complaint investigation and
23 resolution. The commission, at least quarterly and
24 until final disposition of the complaint shall
25 notify the person filing the complaint and each

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1 person or entity complained about of the status of
2 the complaint unless the notice would jeopardize an
3 undercover investigation.

4 Sec. 1. 402. RECORD OF PROCEEDINGS; RIGHT TO HEARING. A
5 record shall be kept of

6 all proceedings had before the commission in accordance
7 with the rules of procedure and evidence, and all the
8 parties shall be entitled to be hear in person or by
9 attorney and to present evidence.

10 Sec. 1. 403. JUDICIAL STAY OR SUSPENSION OF ORDER, RULING, OR
11 DECISION.

12 During the pendency of an appeal, the district court, the
13 court of civil appeals, or the supreme court, as the case
14 may be, may stay or suspend in whole or in part the
15 operation of the regulatory authority order, ruling, or
16 decision and such courts in granting or refusing a stay
17 or suspension shall act in accordance with the practice
18 of courts exercising equity jurisdiction.

19 Sec. 1. 404. LIBERAL CONSTRUCTION. This Act shall be
20 construed liberally to promote the

21 effectiveness and efficiency of regulation of public
22 utilities and other regulated entities to the extent that
23 such construction preserves the validity of this act and
24 its provisions and each affected person's legal and
25 procedural rights. The provisions of this Act shall be

1 construed to apply so as not to conflict with any
2 authority of the United States.

3 Sec. 1.405. TERMINATING SERVICES TO ELDERLY AND DISABLED
4 CRITERIA AND

5 GUIDELINES; ESTABLISHMENT. The commission is authorized
6 to establish criteria and guidelines with the utility
7 industry relating to procedures employed by the industry
8 in terminating services to the elderly and disabled.

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12 Sec. 1.406. SEVERABILITY. If any provision of this Act or
13 the application thereof to any

14 person or circumstances is held invalid, such invalidity
15 does not affect other provisions or applications of this
16 Act which can be given effect without the invalid
17 provision or application, and to this end the provisions
18 of this Act are declared to be severable.

19
20 TITLE II. ELECTRIC PUBLIC UTILITIES

21 SUBTITLE A. GENERAL PROVISIONS

22 Sec. 2.001. LEGISLATIVE POLICY CONCERNING REGULATION OF and
23 competition in

24 The ELECTRIC UTILITY INDUSTRY.

25 (a) The title is enacted to protect the public interest

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1 inherent in the rates and services of electric
2 public utilities. The legislature finds that
3 public utilities have functioned as monopolies in
4 the services they provide and in the areas they
5 serve, and that therefore the normal forces of
6 competition that operate to regulate prices in a
7 free enterprise society do not operate, and that,
8 therefore, except as otherwise provided for in this
9 Act, utility rates, operations, and services are
10 regulated by public agencies. The purpose of this
11 Title is to establish a comprehensive regulatory
12 system that is adequate to the task of regulating
13 electric public utilities, to assure rates,
14 operations, and services that are just and
15 reasonable to consumers and to the
16 utilities until the industry becomes truly
17 competitive and all or some of such regulation no
18 longer is needed. The legislature finds that the
19 wholesale electric industry, including the
20 generation, sale and resale of electric power
21 through federal legislative, judicial, and
22 administrative actions is becoming a competitive
23 industry which does not lend itself to traditional
24 electric utility regulatory rules, policies, and
25 principles and that, therefore, the public interest

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1 requires that new policies and principles be
2 formulated and applied to protect the public
3 interest in an increasingly competitive market
4 place. The development of a competitive wholesale
5 electric market that allows for increased
6 participation by both utilities and non utilities
7 is in the public interest. To the extent it is
8 compatible with federal law is feasible and will
9 benefit the public, another purpose of this title
10 is to encourage and protect the emergence and
11 development of competition in the retail electric
12 industry, including the transmission and
13 distribution of electric power to business and
14 residential consumers in this state.

- 15 (b) The commission shall encourage the economical
16 production of electric energy by making and
17 enforcing rules to encourage the production of
18 electric energy by qualifying cogenerators and
19 qualifying small power producers.
- 20 (c) On application by a public utility, the regulatory
21 authority may approve wholesale tariffs or
22 contracts containing charges that are less than
23 rates approved by the regulatory authority but
24 equal to or greater than the utility's actual
25 costs. The charges must be in accordance with the

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1 policies of this Act and may not be unreasonably
2 preferential, excessive, prejudicial,
3 discriminatory, predatory, or anti-competitive.

4 (d) The methodology for calculating the actual costs of
5 the electric utility shall consist of energy and
6 capacity components. The energy component shall
7 include variable operation and maintenance expense
8 and the energy component of purchased power. The
9 capacity component included shall be based on the
10 annual economic value of deferring, accelerating,
11 or avoiding the next increment of any needed
12 capacity, whether or not such capacity is purchased
13 or built. The commission shall ensure that the
14 methodology for determining actual cost is
15 consistently applied among utilities but, upon
16 receipt of adequate factual proof from the utility,
17 The Commission may recognize in any case the
18 individual load and resource requirements of the
19 utility.

20 (d) Notwithstanding any other provisions of this Act,
21 the commission shall ensure that the utility's
22 costs of serving customers paying discounted rates
23 under this section or Section 2.052 of this Act are
24 not borne by the utility's other customers. The
25 mark-ups, if any, approved pursuant to Section

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1 2.102 of this Act are an exceptional form of rate
2 relief which may be recovered from ratepayers only
3 on entry of a finding by the commission that such
4 relief is essential necessary to maintain the
5 financial integrity of the utility.

6 Sec. 2.0011. DEFINITIONS. In this title:

7 (1) “Electric public utility” or “electric utility”
8 means any person, corporation, river authority,
9 cooperative corporation, or any combination
10 thereof, or their lessees, trustees, and receivers,
11 now or hereafter owning or operating for
12 compensation in this state equipment or facilities
13 for producing, generating, transmitting,
14 distributing, selling, or furnishing electricity in
15 this state (hereinafter “electric
16 utility”); provided, however, that this definition
17 may not be construed to apply to or include a
18 qualifying facility. The term does not include an
19 exempt wholesale generator, a power marketer, a
20 qualifying cogenerator, qualifying small power
21 producer, a qualifying facility or a person or
22 corporation which:

23 (A) furnishes the services or commodity described
24 in this section only to itself, its employees,
25 or its tenants as an incident of such employee

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- 1 service or tenancy, when such service or
2 commodity is not resold to or used by others;
- 3 (B) owns or operates in this state equipment or
4 facilities for producing, generating,
5 transmitting, distributing, selling, or
6 furnishing electric energy to an electric
7 utility, including generators.
- 8 (c) is otherwise exempt from state laws and
9 regulations under the Federal Power Act as
10 amended (PURPA).
- 11 (2) "Exempt wholesale generator" means a person that is
12 engaged directly, or indirectly through one or more
13 affiliates, exclusively in the business of owning,
14 operating, or both owning and operating all or part
15 of one or more facilities for the generation of
16 electric energy and selling electric energy at
17 wholesale and that:
- 18 (A) does not own facilities for the transmission
19 of electricity, other than essential
20 interconnecting transmission facilities
21 necessary to effect a sale of electric energy
22 at wholesale; and
- 23 (B) has applied to the Federal Energy Regulatory
24 Commission for a determination under Section
25 32, Public Utility Holding Company Act (15

1 U. S. C. Section 79Z-5a), or has registered as
2 an exempt wholesale generator as required by
3 this Act.

- 4 (3) “Power marketer” means a person that:
- 5 (A) becomes owner of electric energy in this state
6 for the purpose of buying and selling the
7 electric energy at wholesale;
- 8 (B) does not own generation, transmission, or
9 distribution facilities in this state;
- 10 (c) does not have a certificated service area; and
- 11 (D) has been granted authority by the Federal
12 Energy Regulatory Commission to sell electric
13 energy at market-based rates or has registered
14 as a power marketer under this Act.
- 15 (4) “qualifying cogenerator” and “qualifying small
16 power producer” have the meanings assigned by
17 Sections 3(18)(C) and 3(17)(D), Federal Power Act
18 (16 U. S. C. Sections 796(18)(C) and 796(17)(D)).
- 19 (5) “Qualifying facility” means a qualifying
20 cogenerator or qualifying small power producer.
- 21 (6) “Rate” means and includes every compensation,
22 tariff, charge, fare, toll, rental, and
23 classification, or any of them demanded, observed,
24 charged or collected whether directly or indirectly
25 by any public utility for any service, product, or

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1 commodity Section 1.003 of this Act, and any
2 rules, regulations, practices, or contracts
3 affecting any such compensation, tariff, charge,
4 fare, toll, rental, or classification.

- 5 (7) "Transmission service" includes construction or
6 enlargement of facilities, transmission over
7 distribution facilities, control area services,
8 scheduling resources, regulation service, providing
9 operating reserves, reactive power support, voltage
10 control, and any other associated electrical
11 services deemed appropriate by the commission.

12 Sec. 2002. COMMISSION AS RESOURCE CENTER; DEVELOPMENT OF
13 ENERGY

14 EFFICIENT SCHOOL FACILITIES. The commission may serve as
15 a resource center to assist school districts in
16 developing energy efficient facilities. As such, the
17 commission may:

- 18 (1) present to school districts programs relating to
19 managing energy, training school-plant operators,
20 and designing energy efficient buildings;
21 (2) provide school districts with technical assistance
22 in managing energy;
23 (3) collect and distribute information relating to
24 energy management in school facilities; and
25 (4) offer to educators energy resource workshops and

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- (a) The commission by rule shall develop an integrated resource planning process to provide reliable energy service at the lowest reasonable system cost. Regarding a public utility's planned purchases and for sales of electric power from/to qualified facilities, qualifying cogenerators and qualifying small power producers, The utility shall utilize incremental costs [16 U.S.C. §824(a)]. In determining the lowest reasonable system cost of an electric utility's plan, the commission shall consider in addition to direct costs the following:
- (1) the effect on the rates and bills of various types of customers;
 - (2) minimization of the risks of future fuel costs and regulations;
 - (3) the appropriateness and reliability of the mix of resources; an appropriate and reliable mix of resources may include a portfolio of cost-effective sources of power including but not limited to resources that are fueled and non-fueled, such as renewable resources and conservation measures and a mixture of long-term and short-term contracts; and
 - (4) the costs of compliance with the environmental protection requirements of all applicable

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1 state and federal laws, rules, and orders.

2 (b) The commission by rule shall adopt and periodically
3 update a statewide integrated resource plan that
4 includes the commission's long-term resource
5 planning goals. The commission shall send a report
6 on the plan to the governor when it adopts or
7 revises the plan and notify each electric public
8 utility of the approval of the statewide plan. The
9 commission shall make the report available to the
10 public

11 (c) The report on the statewide plan shall include:

- 12 (1) historical data for electric consumption
13 statewide and by utility;
- 14 (2) historical data for electric generation by
15 utility and by type of capacity, including
16 alternative energy sources;
- 17 (3) an inventory of generation capacity statewide
18 and by utility;
- 19 (4) quantitative data on demand-side management
20 programs to the extent the commission
21 determines necessary;
- 22 (5) each generating utility's forecast without
23 adjustment;
- 24 (6) The commission's long-term resource planning
25 goals included in the plan;

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- 1 (7) a projection of the need for electric
2 services;
- 3 (8) a description of the approved individual
4 integrated resource plans of public utilities;
5 and
- 6 (9) an assessment of transmission planning being
7 performed by electric utilities within this
8 state.
- 9 (d) In prescribing the requirements under this section,
10 including reporting requirements, the commission
11 shall consider and recognize the differences in
12 capabilities of small and large utilities.
- 13 (e) Generating public utilities as well as
14 nongenerating public utilities planning to
15 construct generating resources shall submit to the
16 commission a preliminary integrated resource plan.
17 Preliminary integrated resource plans shall be
18 submitted every three years and cover a 10-year
19 period. The commission by rule:
- 20 (1) shall:
- 21 (A) prescribe a staggered schedule for the
22 submission of plans by utilities;
- 23 (B) prescribe the form and manner in which a
24 plan must be submitted;
- 25 (C) adopt filing requirements and schedules;

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and

(D) prescribe the methods by which a utility may recover supply-side and demand-side costs; and

(2) may:

(A) define the scope and nature of public participation in the development of the plan; and

(B) establish the general guidelines to be used by utilities in evaluating and selecting or rejecting resources, including procedures governing the solicitation process.

(f) A preliminary plan submitted under this section must include:

(1) the utility's forecast of future demands;
(2) an estimate of the energy savings and demand reduction the utility can achieve during the 10-year period by use of demand-side management resources and the range of possible costs for those resources;

(3) if additional supply-side resources are needed to meet future demand, an estimate of:

(A) the amount and operational characteristics of the additional

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- capacity needed;
 - (B) The types of viable supply-side resources for meeting that need; and
 - (C) The range of probable costs of those resources;
 - (4) if necessary, proposed requests for proposals for demand-side or supply-side resources, or both;
 - (5) The specific criteria the utility will use to evaluate and select or reject those resources which criteria may deviate from the general guidelines on a showing of good cause;
 - (6) The methods by which the utility intends to monitor those resources after selection;
 - (7) The method by which the utility intends to allocate costs;
 - (8) a description of how each utility will achieve equity among customer classes and provide demand-side programs to each customer class including tenants and low-income ratepayers;
 - (9) any proposed incentive factors; and
 - (10) any other information the commission requires.
- (g) Every three years, a municipally owned utility shall submit to the commission a report containing all of the information required in a preliminary

1 integrated resource plan under Subsection (f) of
2 this section, but shall not otherwise be subject to
3 the requirements of this section.

4 (h) If the utility's preliminary plan does not include
5 a proposed solicitation under Subsection (f)(4) of
6 this section, the plan shall be filed with the
7 commission so that the commission may compile the
8 report required in Subsection (c) of this section.
9 Only if the utility's preliminary plan includes a
10 proposed solicitation under Subsection (f)(4) of
11 this section may the commission, on its own motion
12 or

13 on the motion of the utility or of an affected
14 person, convene a public hearing on the adequacy
15 and merits of the preliminary plan. At the
16 hearing, any interested person may intervene,
17 present evidence, and cross-examine witnesses
18 regarding the contents and adequacy of the
19 preliminary plan. Discovery is limited to an issue
20 relating to the development of the preliminary
21 plan, a fact issue included in the preliminary
22 plan, and other issues the commission is required
23 to decide relating to the preliminary plan. A
24 commission hearing is not required for a
25 preliminary plan filed by a river authority or

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1 generating electric cooperative that does not
2 intend to build a new generating plant or for a
3 preliminary plan filed by a municipally-owned
4 public utility.

5 (i) After the hearing, the commission shall determine:

6 (1) whether the utility's preliminary plan is
7 based on substantially accurate data and an
8 adequate method of forecasting;

9 (2) whether the utility's preliminary plan
10 identifies and takes into account any present
11 and projected reductions in the demand for
12 energy that may result from cost-effective
13 measures to improve conservation and energy
14 efficiency in various customer classes of the
15 area being served;

16 (3) if additional supply-side resources are needed
17 to meet future demand, whether the utility's
18 preliminary plan adequately demonstrates:

19 (A) the amount and operational
20 characteristics of the additional
21 capacity needed;

22 (B) The types of viable supply-side
23 resources for meeting that need; and

24 (C) The range of probable costs of those
25 resources;

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- 1 (4) whether the utility's preliminary plan
2 demonstrates the opportunities for appropriate
3 persons to participate in the development of
4 the preliminary plan;
- 5 (5) whether the specific criteria the utility will
6 use to evaluate and select or reject resources
7 are reasonable and consistent with the
8 guidelines of the integrated resource planning
9 process;
- 10 (6) whether the cost allocation method proposed by
11 the utility is reasonable;
- 12 (7) how the utility will achieve equity among
13 customer classes and provide demand-side
14 programs to each customer class, including
15 tenants and low-income ratepayers; and
- 16 (8) whether any incentive factors are appropriate
17 and, if so, the levels of such incentive
18 factors.
- 19 (j) Not later than the 180th day after the date of the
20 utility files the preliminary plan, the commission
21 shall issue an interim order on the preliminary
22 plan. The commission shall approve the preliminary
23 plan, modify the preliminary plan, or, if
24 necessary, remand the preliminary plan for
25 additional proceedings. The 180-day period may be

1 extended for a period not to exceed 30 days for
2 extenuating circumstances encountered in the
3 development and processing of an initial plan, if
4 the extenuating circumstances are fully explained
5 and agreed on by a majority of the commissioners.

6 (k) On approval of the preliminary plan, the utility
7 shall conduct solicitations for demand-side and
8 supply-side resources, as prescribed in the
9 preliminary plan. In addition to soliciting
10 resources from unaffiliated third parties, The
11 utility may:

- 12 (1) prepare and submit a bid of a new utility
13 demand-side management program as prescribed
14 by Subsection (m) of this section;
- 15 (2) receive bids from one or more affiliates; and
- 16 (3) request a certificate of convenience and
17 necessity for a new rate-based generating
18 plant.

19 (1) Each bidder, including the utility and its
20 affiliates, shall submit two copies of its bid to
21 the commission. The commission shall ensure that
22 the utility has access to all bids at the same
23 time. The commission shall keep a copy of each bid
24 submitted by the utility or an affiliate to
25 determine whether the utility complied with the

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1 criteria established for conduct of the
2 solicitation. A bid submitted under this
3 subsection or retained under this subsection is
4 confidential and is not subject to disclosure under
5 Public Records Act.

6 (m) If a utility wants to use a proposed demand-side
7 management program to meet a need identified in the
8 preliminary plan, the utility must prepare a bid
9 reflecting that resource. A bid prepared by the
10 utility under this subsection must comply with the
11 solicitation, evaluation, selection, and rejection
12 criteria specified in the preliminary plan. The
13 utility may not give preferential treatment or
14 consideration to a bid prepared under this
15 subsection.

16 (n) The utility shall evaluate each bid submitted
17 including an affiliate bid, in accordance with the
18 criteria specified in the preliminary plan and
19 shall negotiate necessary contracts. The utility
20 is not required to accept a bid and may reject any
21 or all bids in accordance with the selection and
22 rejection criteria specified in the preliminary
23 plan. If the results of the solicitations and
24 contract negotiations do
25 not meet the supply-side needs identified in the

1 preliminary plan, the utility may apply for a
2 certificate of convenience and necessity for a
3 utility-owned resource addition notwithstanding the
4 fact a solicitation was conducted and the addition
5 was not included in the approved preliminary plan.

6 (o) After conducting the solicitations and negotiating
7 the contracts, the utility shall submit to the
8 commission a proposed final integrated resource
9 plan. The proposed final plan must include:

- 10 (1) The results of the solicitations;
- 11 (2) The contracts for resources;
- 12 (3) The terms and conditions under which the
13 utility will provide resources to meet a need
14 identified in the preliminary plan, if the
15 utility accepts a bid submitted under
16 Subsection (m) of this section; and
- 17 (4) an application for a certificate of
18 convenience and necessity, if necessary.

19 (p) The commission shall, on request by an affected
20 person and within 90 days after the date a utility
21 files its final integrated resource plan under this
22 section, convene a public hearing on the
23 reasonableness and cost-effectiveness of the
24 proposed final plan. At the hearing, any
25 interested person may intervene, present evidence,

1 and cross-examine witnesses regarding the
2 reasonableness and cost-effectiveness of the
3 proposed final plan. Parties will not be allowed
4 to litigate or conduct discovery on issues that
5 were litigated or could have been litigated in
6 connection with the filing of the utility's
7 preliminary plan. To the extent permitted by
8 federal law, the commission may issue a written
9 order for access to the books, accounts, memoranda,
10 contracts, or records of an exempt wholesale
11 generator or
12 power marketer selling energy at wholesale to a
13 utility, if the examination is required for the
14 effective discharge of the commission's regulatory
15 responsibilities under this Act, except that if the
16 commission issues such an order, the books,
17 accounts, memoranda, contracts, and records
18 obtained by the Commission are confidential and not
19 subject to disclosure under Public Records Act.

- 20 (q) After the hearing, the commission shall determine
21 whether:
- 22 (1) the utility's proposed final plan was
23 developed in accordance with the preliminary
24 plan and commission rules;
 - 25 (2) the resource solicitations, evaluations,

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- 1 selections and rejections were conducted in
2 accordance with the criteria included in the
3 preliminary plan;
- 4 (3) the utility's proposed final plan is cost-
5 effective;
- 6 (4) the final plan is equitable among customer
7 classes and provides demand-side programs to
8 each customer class, including tenants and
9 low-income ratepayers;
- 10 (5) the commission should certify the contracts
11 and any utility bid submitted under subsection
12 (m) of this section that resulted from the
13 solicitations; and
- 14 (6) the commission should grant a requested
15 certificate of convenience and necessity for a
16 utility-owned resource addition.
- 17 (r) (1) In determining whether to certify a supply-
18 side or demand-side contract that results from
19 the solicitations, the commission shall
20 consider the reliability, financial condition,
21 and safety of that resource contract and
22 whether the solicitation, evaluation, and
23 selection of that resource contract was
24 conducted in accordance with the criteria
25 included in the preliminary plan. The

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commission shall not certify contracts for new purchases of power by a utility unless the utility has determined, after giving consideration to consistently applied regional or national reliability standards, guidelines, or criteria that the contract would not unreasonably impair the continued reliability of electric systems affected by the purchase, and the purchase can reasonably be expected to produce benefits to customers of the purchasing utility. Commission certification of a resource contract does not negate the necessity of the resource to comply with all applicable environmental and siting regulations. In addition, if the contract is with a utility affiliate, the commission shall determine whether the utility treated and considered the affiliate's bid in the same manner it treated and considered other bids intended to meet the same resource needs and shall further determine, in connection with such purchase, whether:

- (A) the transaction will benefit consumers;
- (B) the transaction violates any state law, including least-cost planning;

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- (C) the transaction provides the utility affiliate any unfair competitive advantage by virtue of its affiliation or association with the utility;
- (D) the transaction is in the public interest; and
- (E) the commission has sufficient regulatory authority, resources, and access to the books and records of the utility and its affiliate to make these determinations.

(2) In setting a public utility's rate for a period during which a certified contract is effective, the regulatory authority shall consider payments made under the contract to be reasonable and necessary operating expenses of the public utility. The regulatory authority may provide for monthly recover of the approved costs of the contract as those costs are incurred, including the allowed mark-up determined by the commission.

(s) In determining whether to grant a requested certificate of convenience and necessity, the commission shall consider the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same

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1 kind already serving the proximate area. The
2 commission shall also consider other factors such
3 as community values, recreational and park areas,
4 historical and aesthetic values, environmental
5 integrity, and the probable improvement of service
6 or lowering of cost to consumers in that area if
7 the certificate is granted. The commission shall
8 grant the certificate as part of the approval of
9 the final plan if it finds that:

- 10 (1) the proposed addition is necessary under the
11 final plan;
- 12 (2) the proposed addition is the best and most
13 economical choice of technology for that
14 service area; and
- 15 (3) cost-effective conservation and other cost-
16 effective alternative energy sources cannot
17 reasonably meet the need.
- 18 (t) Not later than the 180th day after the date the
19 utility files the proposed final plan, the
20 commission shall issue a final order on the plan.
21 The commission shall
22 approve the proposed final plan, modify the
23 proposed final plan, or if necessary, remand the
24 proposed final plan for additional proceedings.
- 25 (u) The commission shall adopt rules allowing a utility

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1 to add, consistent with the utility's last approved
2 integrated resource planning goals, new or
3 incremental resources outside the solicitation
4 process, including resources listed in Subsection
5 (x) of this section.

6 (v) In addition to its other authority and
7 responsibility under this section, the commission
8 shall establish rules and guidelines that will
9 promote the development of renewable energy
10 technologies consistent with the guidelines of the
11 integrated resource planning process.

12 (w) In carrying out its duties related to the
13 integrated resource planning process and in setting
14 rates for utilities which are not required to file
15 an integrated resource plan, the commission may:

- 16 (1) allow timely recovery of reasonable costs of
17 conservation, load management, and purchased
18 power, notwithstanding Section 2.212(g)(1) of
19 this Act;
- 20 (2) authorize additional incentives for
21 conservation, load management, purchased
22 power, and renewable resources; and
- 23 (3) review the state's transmission system to
24 determine and make recommendations to public
25 utilities on the need to build new power

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1 lines, upgrade power lines, and make other
2 improvements and additions as necessary.

3 (x) Consistent with the utility's last approved
4 integrated resource planning goals, if any, the
5 utility, including a nongenerating utility, may add
6 new or incremental resources outside the
7 solicitation process such as:

- 8 (1) contract renegotiation for existing capacity
9 from an electric cooperative or nonaffiliated
10 power generating facilities;
- 11 (2) electric cooperative or nonaffiliated demand-
12 side management programs or renewable
13 resources;
- 14 (3) capacity purchase with terms of two years or
15 less from an electric cooperative or
16 nonaffiliated power suppliers or capacity
17 purchases necessary to satisfy unanticipated
18 emergency conditions;
- 19 (4) The exercise of an option in a purchased power
20 contract with an electric cooperative or
21 nonaffiliated supplier; and
- 22 (5) renewable distributed resources, located at or
23 near the point of consumption, if they are
24 less costly than transmission extensions or
25 upgrades.

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1 (y) The addition of a new or incremental resources by a
2 utility under Subsection (x) of this section does
3 not require an amendment to the utility's
4 integrated resource plan.

5 (1) for the purpose of determining a utility's
6 avoided capacity costs under 18 CFR Chapter I,
7 Subchapter K, Part 292, Subpart C, on
8 submitting a preliminary integrated resource
9 plan to the commission under this section, the
10 utility's avoided capacity costs shall be
11 deemed to be \$0 and shall remain \$0, with
12 respect to any capacity needs shown in such
13 preliminary
14 integrated resource plan or final integrated
15 resource plan that are to be satisfied by
16 resources approved in the utility's final
17 integrated resource plan.

18 (2) Nothing in this subsection shall affect the
19 validity of any contract entered into between
20 a qualifying facility and an electric utility
21 for any purchase.

22 (aa) nongenerating utilities not planning to construct
23 generating resources are not required to submit an
24 integrated resource plan to the commission. If
25 such a utility seeks to purchase more than 25

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1 percent of its peak demand or more than 70
2 megawatts from a wholesale power supplier other
3 than its existing power supplier, the utility shall
4 conduct a solicitation for resources. However, no
5 solicitation is required for purchases from an
6 existing power supplier, and new or incremental
7 resources may be added outside the solicitation
8 process as provided in subsection (x) of this
9 section. If requested by such a utility, the
10 commission may review the reasonableness of any
11 contract for resources resulting from the
12 solicitation. On a finding by the commission that
13 such a contract is reasonable, the commission shall
14 certify the contract. The commission shall make
15 its determination within 90 days after the date the
16 proposed contract is submitted. Nothing in this
17 subsection is intended to alter or amend existing
18 wholesale power supply contracts.

19 (bb) to the extent that the commission authorizes
20 utilities to recover costs of demand-side
21 management programs, conservation, load management,
22 or purchased power through various cost recovery
23 factors, the commission shall make a final
24 reconciliation of the costs recovered through those
25 cost recovery factors. The commission shall adopt

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1 rules regarding when the reconciliations will occur
2 for

3 each of the cost recovery factors, what type of
4 information utilities need to file in support of
5 the reconciliation, and other matters necessary to
6 perform the reconciliation. The reconciliation
7 shall (1) review the reasonableness of the
8 utility's administration of the contracts and
9 programs whose costs are being reconciled and (2)
10 reconcile the revenue collected under each cost
11 recovery factor and the costs that the utility
12 incurred on purchased power, demand-side
13 management, conservation, or load management during
14 the reconciliation period.

15 (cc) to provide for the orderly transition to an
16 integrated resource planning process and to avoid
17 delays in the construction of resources necessary
18 to provide electric service, an integrated resource
19 plan shall not be required prior to the issuance of
20 a certificate of convenience and necessity for the
21 construction of generating facilities if:

- 22 (1) the commission has approved the utility's
23 notice of intent prior to the effective date
24 of this section;
25 (2) the utility has conducted a solicitation for

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1 resources to meet the need identified in the
2 utility's notice of intent in accordance with
3 commission rules then in effect; and
4 (3) the utility has submitted to the commission
5 the results of the solicitation and an
6 application for certification of facilities to
7 meet the need identified in the utility's
8 notice of intent. A certificate of
9 convenience and necessity shall be granted by
10 the commission if the facilities are needed to
11 meet future demand, the facilities are the
12 best and most economical choice of
13 technology for the service area, and cost-
14 effective conservation and cost-effective
15 alternative energy sources cannot reasonably
16 meet the need.
17 (dd) to the extent that the public utility is required
18 by the commission to reimburse a municipality for
19 expenses the municipality incurred for its
20 participating in a proceeding under this section,
21 the commission shall, as part of its determination
22 approving the public utility's integrated resource
23 plan, authorize a surcharge to be included in the
24 public utility's rates to recover the
25 municipality's expenses for participating in the

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1 integrated resource plan proceeding before the
2 public utility's next preliminary integrated
3 resource plan is filed. The reasonable expenses of
4 the public utility for planning, preparation, and
5 participating in such a proceeding may only be
6 recovered after commission review conducted in
7 accordance with the provisions of either section
8 2.211 or 2.212 of this act.

9 Sec. 2.052. EXEMPT WHOLESALE GENERATORS AND POWER MARKETERS.

- 10 (a) An exempt wholesale generator or power marketer may
11 sell electric energy only at wholesale.
- 12 (b) The commission has the following jurisdiction over
13 exempt wholesale generators and power marketers
14 that sell electric energy in this state:
 - 15 (1) to require registration as provided by
16 Subsection (c) of this section; and
 - 17 (2) to require filing of reports the commission
18 prescribes by rule.
- 19 (c) Each exempt wholesale generator and power marketer
20 shall within 30 days after the date it becomes
21 subject to this section, register with the
22 commission or provide proof that it has registered
23 with the Federal Energy Regulatory Commission or
24 has been authorized by the Federal Energy
25 Regulatory Commission to sell electric

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1 energy at market-based rates. Registration may be
2 accomplished by filing with the commission a
3 description of the location of any facility used to
4 provide service, the type of service provided, a
5 copy of any information filed with the Federal
6 Energy Regulatory Commission in connection with
7 registration with that commission, and other
8 information the commission prescribes by rule.

9 Sec. 2053. EXEMPT WHOLE SALE GENERATOR AND POWER MARKETER
10 AFFILIATES.

11 (a) An affiliate of a public utility may be an exempt
12 wholesale generator or power marketer and may sell
13 electric energy to its affiliated public utility in
14 accordance with Section 2.051 of this Act and other
15 provisions of law governing wholesale sales of
16 electric energy.

17 (b) If a rate or charge for or in connection with the
18 construction of a facility, or for electric energy
19 produced by the construction of a facility, or for
20 electric energy produced by a facility other than
21 any portion of a rate or charge which represents
22 recovery of the cost of a wholesale rate or charge
23 was in effect as of the date of enactment of this
24 section, the facility shall not be sold or
25 transferred to an affiliate or otherwise considered

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1 an eligible facility as defined by federal law,
2 provided that the commission may, after notice and
3 hearing, allow such facility to be sold or
4 transferred to an affiliate, or become an eligible
5 facility only if such sale or transfer will benefit
6 ratepayers of the utility making the sale or
7 transfer, is in the public interest and otherwise
8 complies with state law.

9 (c) Any transfer of assets from a utility to an
10 affiliated exempt wholesale generator or power
11 marketer shall be valued at the greater of net book
12 cost or fair market
13 value. Any transfer of assets from an exempt
14 wholesale generator or power marketer to an
15 affiliated public utility shall be valued at the
16 lesser of net book cost or fair market value. At
17 the time the transfer is approved, the commission
18 shall order the utility to adjust its rates so that
19 its tariffs reflect benefits from the proceeds of
20 the sale and exclude any costs associated with the
21 transferred facility.

22 Sec. 2.054. TRANSMISSION SERVICE.

23 (a) The commission may require a utility, including a
24 municipally owned utility, to provide transmission
25 service at wholesale to another utility, a

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1 qualifying facility, an exempt wholesale generator,
2 or a power marketer and may determine whether the
3 terms and conditions for the transmission service
4 are reasonable. The commission may require
5 transmission service at wholesale, including
6 construction or enlargement of facilities in a
7 proceeding not related to approval of an integrated
8 resource plan. The commission may not issue a
9 decision or rule relating to transmission service
10 that is contrary to an applicable decision, rule,
11 or policy statement of a federal regulatory agency
12 having jurisdiction.

13 (b) The commission, with the advice and consent of the
14 governor, shall appoint a five-person interstate
15 connection committee to investigate the most
16 economical, reliable, and efficient means to
17 synchronously interconnect the alternating current
18 electric facilities of the electric facilities of
19 electric utilities with the New Mexico reliability
20 area to the alternating current electric facilities
21 of the electric facilities of electric utilities
22 within the Southwest Power Pool reliability area.
23 The committee shall report an estimate of the cost
24 and benefit to effect the interconnection, an
25 estimate of the time to construct the

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1 interconnecting facilities, and the service
2 territory of the utilities in which those
3 facilities will be located. The committee shall
4 submit its reports to the legislature by September
5 1, 1999 at which time the committee shall be
6 dissolved.

7
8 Sec. 2.055. **WHOLESALE COMPETITION.**

9 (a) A public utility that owns or operates transmission
10 facilities shall provide wholesale transmission
11 service at rates, terms of access, and conditions
12 that are comparable to the rates, terms of access,
13 and conditions of the utility's use of its system.
14 The commission shall ensure that utilities provide
15 nondiscriminatory access to transmission service
16 for qualifying facilities, exempt wholesale
17 generators, power marketers, and public utilities .

18
19 The commission shall adopt rules within 180 days of
20 the effective date of this section relating to
21 wholesale transmission service, rates, and access.
22 The rules shall be consistent with the standards in
23 the section, shall not be contrary to federal law,
24 including any applicable policy statement,
25 decision, or rule of a federal regulatory agency,

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1 having jurisdiction and shall require transmission
2 services that are not less than the transmission
3 services the Federal Energy Regulatory Commission
4 may require in similar circumstances. The rules
5 shall also provide that all ancillary services
6 associated with a utility's discounted wholesale
7 sales shall be provided by the utility at the same
8 prices and under the same terms and conditions as
9 such services are provided to third persons, and
10 all ancillary services provided by the utility and
11 associated with its discounted wholesale sales
12 shall also be provided to third persons upon
13 request. All public utilities that own or operate
14 transmission facilities shall file tariffs
15 implementing such rules within 60 days after the
16 commission has adopted transmission pricing and
17 access rules pursuant to this section unless the
18 terms and conditions for access and pricing are
19 included in the tariff of another utility. Such
20 tariffs shall be filed with the appropriate state
21 or federal regulatory agency having jurisdiction
22 over the transmission service of the entity filing
23 the tariff.

24 (b) The commission shall adopt rules relating to the
25 registration and reporting requirements of exempt

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1 qualifying facilities, exempt wholesale generators,
2 and power marketers, provided that such rules do
3 not impose significant economic burden on the
4 registrants and such rules do not permit the
5 disclosure of information which would be
6 economically harmful or subject the reporting
7 entity to a competitive disadvantage prior to the
8 deregulation of the industry.

9 (c) To the extent a utility provides transmission of
10 electric energy at the request of a third party,
11 the commission shall ensure that the costs of the
12 transmission are not borne by the utility's other
13 customers by requiring the utility to recover from
14 the entity for which the transmission is provided
15 actual costs incurred by the utility in providing
16 transmission services necessary for the
17 transaction.

18 (d) For the purposes of administering these rules, the
19 commission may require that parties to a dispute
20 over the prices, terms and conditions of wholesale
21 transmission service engage in a nonbinding
22 alternative dispute resolution process before
23 seeking a resolution of a dispute from the
24 commission.

25 (e) The commission shall submit a report to the 45th

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1 Legislature, First Session on methods or procedures
2 for quantifying the magnitude of any claimed
3 stranded

4 investment, but the commission shall not allocate
5 or permit the recovery of such claimed costs
6 without the express authority of the legislature.

7 (f) Affiliates of public utilities, exempt wholesale
8 generators, qualifying facilities, and all other
9 providers of generation shall be permitted to
10 compete for the business of selling electric power.
11 In accordance with the applicable provisions of
12 this Act, a public utility may purchase power from
13 an affiliate. A public utility may not grant undue
14 preference to any person in connection with the
15 utility's purchase or sale of electric energy at
16 wholesale or other utility services.

17 (g) For the purposes of this section, the term "public
18 utility" shall include municipally owned utilities.
19 Further, all municipally-owned electric utilities
20 shall comply with the provisions of this Title II
21 and the enforcement provision of this Act; any
22 failure is subject, after complaint and hearing, to
23 remedial orders issued by the commission.

24 Sec. 2.058. APPEAL FROM MUNICIPALITIES.

25 (a) Any party to a rate proceeding of a municipally

1 owned electric utility before the governing body of
2 a municipality may appeal the decision of the
3 governing body to the commission.

4 (b) Citizens of a municipality may appeal the decision
5 of the governing body in any rate proceeding to the
6 commission through the filing of a petition for
7 review signed by the lesser of 20,000 or 10 percent
8 of the number of qualified voters of such
9 municipality.

10 (c) (1) Ratepayers of a municipally owned electric
11 utility outside the municipal limits may
12 appeal any action of the governing body
13 affecting the rates of
14 the municipally owned electric utility
15 through filing with the commission a petition
16 for review signed by the lesser of 10,000 or
17 five percent of the ratepayers served by such
18 utility outside the municipal limits.

19
20 For purposes of this subsection each person
21 receiving a separate bill shall be considered
22 as a ratepayer. But a person is not
23 considered as being more
24 than one ratepayer notwithstanding the number
25 of bills received. Such petition for review

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1 shall be considered properly signed if signed
2 by any person, or spouse of any such person,
3 in whose names residential utility service is
4 carried.

5 (2) The municipality that owns the electric
6 utility shall on request disclose to any
7 person the number of ratepayers who reside
8 outside the municipal limits. The
9 municipality shall provide the information by
10 telephone or in a written form, as preferred
11 by the person making the request. The
12 municipality may not charge a fee for
13 providing the information. The municipality
14 shall on request provide to any person a list
15 of the names and addresses of the ratepayers
16 who reside outside the municipal limits. The
17 municipality may charge a reasonable fee to
18 cover the cost of providing the list.

19 (3) Not later than the 14th day after the date on
20 which the governing body makes a final
21 decision, the municipality shall issue a
22 written report stating the effect of the
23 decision on each class of ratepayers. The
24 appeal process shall be instituted by filing a
25 petition for review with the commission and

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1 serving copies on all parties to the original
2 rate proceeding. The petition must be filed
3 not later than the 45th day after the date on
4 which the municipality issues the written
5 report prescribed by this subsection.

6 (4) Not later than the 90th day after the date on
7 which a petition for review that meets the
8 requirements of this subsection is filed, the
9 municipality shall file with the commission a
10 rate application that complies in all material
11 respects with the rules and forms prescribed
12 by the commission.

13 The commission may, for good cause shown,
14 extend the period for filing the rate
15 application.

16 (d) Any municipally owned electric utility whose rates
17 have been or are appealed under Subsection (c) of
18 this section, and for which the commission has
19 ordered or orders a decrease in annual nonfuel base
20 revenues which exceeds 10 percent of the utility's
21 nonfuel base revenues, as calculated on a total
22 system basis (without regard to the municipal
23 utility's corporate boundaries) and established in
24 the rate ordinance or ordinances appealed from, and
25 for which the commission has found or finds that

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1 the rates paid by the combined residential or any
2 other major customer class (other than any class or
3 classes where the city is itself the customer of
4 the municipally owned utility) are removed from
5 cost-of-service levels to the extent that, under
6 the nonfuel base revenue requirement adopted by the
7 commission (as computed on a total system basis
8 without regard to the municipality's corporate
9 boundaries), a change in nonfuel base rate revenues
10 in excess of 50 percent from adjusted test year
11 levels would be required to move that class to a
12 relative rate of return of unity (1.00 or 100
13 percent) under the cost-of-service methodologies
14 adopted by the commission in an appeal under
15 Subsection (c) of this section, shall thereafter be
16 subject to the following:

- 17 (1) For a period of 10 years beginning on the
18 effective date of the rate ordinance which was
19 the subject of the commission's final order
20 invoking the application of this subsection,
21 the commission shall have appellate
22 jurisdiction over the rates charged by the
23 municipally owned utility, both inside and
24 outside such municipality's corporate limits,
25 in the same manner and subject to the same

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1 commission powers and authority as set forth
2 in this Act for public utilities, but
3 specifically limited as follows:

4 (A) The commission shall have the
5 jurisdiction to review the cost
6 allocation and rate design methodologies
7 adopted by the city council or other
8 governing body of the municipally owned
9 utility subject to this subsection.

10 (i) If the commission finds that such
11 cost-of-service methodologies
12 result in rates which are unjust,
13 unreasonable, or unreasonably
14 discriminatory or unduly
15 preferential to any customer class,
16 then the commission may order the
17 implementation of ratesetting
18 methodologies which the commission
19 finds reasonable.

20 (ii) The commission shall ensure that a
21 customer class, other than any
22 class or classes where the city is
23 itself the customer of the
24 municipally owned utility, does not
25 pay rates which result in a

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relative rate of return exceeding
115 percent under the cost-of-
service methodology found
reasonable by the commission,
provided that a customer class may
not experience a percentage base
rate increase that is greater than
1-1/2 times the system average base
increase. In moving above-cost
classes toward cost-of-service
levels, those classes farthest
above cost shall be moved
sequentially toward cost, such that
no above-cost class moves toward
cost until no other class or
classes are further removed from
cost.

(iii) The municipality may, as a
matter of intra-class rate
design, design residential
rates to accomplish reasonable
energy conservation goals,
notwithstanding any other
provision of this Act.

(B) The commissioner's jurisdiction under

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this subsection may be invoked by any party to the local rate proceedings required by this subsection, in the same manner as appeals of the rates of public utilities under Subsection (a) of this section. Provided, however that the commission's jurisdiction under this subsection does not extend to the municipally owned utility's revenue requirements,

whether base rate or fuel revenues, its invested capital, its return on invested capital, its debt service coverage ratio, or the level of any transfer of revenues from the utility to the municipality's general fund.

- (2) The city council or other governing board of a municipally owned utility subject to this subsection shall establish procedures to protect the rights of ratepayers and competitors as established in this Act. Such procedures shall include a public hearing process in which affected ratepayers and competitors of the municipality owned utility are granted party status on request and are

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1 grouped for purposes of participation in
2 accordance with their common or divergent
3 interests, including but not limited to the
4 particular interests of all-electric and out-
5 of-city residential ratepayers. Such
6 procedures shall require the city council or
7 governing board of the municipally owned
8 utility to which this subsection applies to
9 employ the use of the New Mexico Rules of
10 Evidence, the New Mexico Rules of Civil
11 Procedure, and the presentation of sworn
12 testimony and other forms of sworn evidence.
13 The city council or other governing board
14 shall appoint a consumer advocate to represent
15 the interests of residential and small
16 commercial ratepayers in the municipality's
17 local rate proceedings. The consumer
18 advocate's reasonable costs of participation
19 in said proceedings, including the reasonable
20 costs of ratemaking consultants and expert
21 witnesses, shall be funded by and recovered
22 from such residential and small commercial
23 ratepayers.

- 24 (3) The commission shall establish rules
25 applicable to any party to an appeal under

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1 Subsection (c) of this section that provides
2 for the public disclosure of financial and in-
3 kind contributions and expenditures related to
4 the preparation and filing of a petition for
5 appeal and in preparation of expert testimony
6 or legal representation for an appeal. Any
7 party or customer who is a member of a party
8 who makes a financial contribution or in-kind
9 contribution to assist in an appeal of another
10 party or customer class under Subsection (c)
11 of this section shall, upon a finding of the
12 commission to that effect, be required to pay
13 the municipally owned utility a penalty
14 equivalent in amount to two times the
15 contribution. Nothing in this subsection
16 shall be construed to limit the right of any
17 party or customer to expend funds to represent
18 its own interests following the filing of a
19 petition with the commission under Subsection
20 c of this section.

- 21 (e) Any municipally owned electric utility whose rates
22 have been or are appealed under Subsection c of
23 this section, and for which the commission has
24 ordered or orders AA decrease in annual nonfuel
25 base revenues which exceeds 10 percent of the

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1 utility's nonfuel base revenues, as calculated on a
2 total system basis (without regard to the municipal
3 utility's corporate boundaries) and established in
4 the rate ordinance or ordinances appealed from, and
5 for which the commission has found or finds that
6 the rates paid by the combined residential or any
7 other major customer class (other than any class or
8 classes where the city is itself the customer of
9 the municipally owned utility) are removed from
10 cost-of-service levels to the

11 extent that, under the nonfuel base revenue
12 requirement adopted by the commission (as computed
13 on a total system basis without regard to the
14 municipality's corporate boundaries), a change in
15 nonfuel base rate revenues in excess of 50 percent
16 from adjusted test year levels would be required to
17 move that class to a relative rate of return of
18 unity (1.00 or 100 percent) under the cost-of-
19 service methodology adopted by the commission in an
20 appeal under Subsection (c) of this section shall
21 thereafter be subject to the following:

- 22 (1) For a period of 10 years beginning the
23 effective date of the rate ordinance which was
24 the subject of the commission's final order
25 invoking the application of this subsection,

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1 the commission shall have appellate
2 jurisdiction over the rates charged by the
3 municipally owned utility, outside the
4 municipality's corporate limits, in the manner
5 and to the extent provided in this subsection.

6 (2) Ratepayers of a municipally owned utility
7 subject to this subsection who reside outside
8 the municipality's corporate limits may appeal
9 any action of the governing body affecting the
10 rates charged by the municipally owned
11 electric utility outside the corporate limits
12 through filing with the commission a petition
13 for review in accordance with the same
14 procedures, requirements, and standards
15 applicable to appeals brought under Subsection
16 (c) of this section, except as otherwise
17 specifically provided in this subsection. The
18 petition for review must plainly disclose that
19 the cost of bringing and pursuing the appeal
20 will be funded by a surcharge on the monthly
21 electric bills of outside-city ratepayers in a
22 manner prescribed by
23 the commission.

24 (A) Upon commission approval of the
25 sufficiency of a petition, the

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appellants shall submit for the approval of the Office of Public Utility Counsel a budget itemizing the scope and expected cost of consultant services to be purchased by the appellants in connection with the appeal.

(B) After a final order has been entered by the commission in the appeal, the consultant and legal costs approved by public counsel as reasonable shall be assessed by the municipality on a per capita basis among residential ratepayers who reside outside the municipality. Surcharges shall be assessed in a one-time charge not later than 120 days following entry of the commission's final order. Costs incurred by the appellants shall be reimbursed by the municipality within not later than 90 days following the date the commission enters its final order.

(C) The municipality may not include the costs associated with its defense of an appeal under this subsection in the

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rates of outside-city ratepayers. Nor shall the municipality, if it appeals from an order entered by the commission under this subsection, include the costs associated with its appeal in the rates of ratepayers who reside outside the city.

(D) Ratepayers who appeal under this subsection may not receive funding for rate case expenses except from residential ratepayers who reside outside the municipality's boundaries or from other municipalities inside whose corporate limits the municipally owned utility provides service. The commission shall adopt rules for the reporting of financial and in-kind contributions in support of appeals brought under this subsection. Upon a finding by the commission that an appellant has received contributions from any source other than outside-city ratepayers or such other municipalities, the appeal and orders of the commission entered therein shall be null and void.

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(3) In appeals under this subsection, the commission shall have jurisdiction and authority to review and ensure that the revenue requirements of any municipally owned utility subject to this subsection are reasonable, but such jurisdiction and authority does not extend to regulation of the use and level of any transfer of the utility's revenues to the municipality's general fund. The commission shall also have jurisdiction and authority to review the cost allocation and rate design methodologies adopted by the governing body of the municipally owned utility. If the commission finds that such cost-of-service methodologies result in rates which are unjust, unreasonable, or unreasonably discriminatory or unduly preferential to any customer class, then the commission may order the implementation of ratesetting methodologies which the commission finds reasonable, provided, however, that the commission's jurisdiction under this subsection does not encompass matters of intra-class residential rate design.

(4) An intervenor in an appeal brought under this

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1 subsection shall be limited to presenting
2 testimony and evidence on cost allocation and
3 rate design methodologies, except that
4 intervenors may present evidence and testimony
5 in support of the municipality on issues
6 related to utility revenues.

7 (5) An appellant ratepayer residing outside the
8 corporate limits of a municipally owned
9 utility subject to this subsection shall, in
10 appealing from a rate ordinance or other
11 ratesetting action of the municipality's
12 governing board, elect to petition for review
13 under either Subsection (c) of this section or
14 this subsection.

15 (f) The appeal process shall be instituted within 30
16 days of the final decision by the governing body
17 with the filing of a petition for review with the
18 commission and copies served on all parties to the
19 original rate proceeding.

20 (g) The commission shall hear such appeal de novo based
21 on the test year presented to the municipality and
22 by its final order shall fix such rates as the
23 municipality should have fixed in the ordinance
24 from which the appeal was taken. In the event that
25 the commission fails to enter its final order: (1)

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1 for proceedings involving the rates of a
2 municipally owned utility, within 185 days from the
3 date on which the appeal is perfected or on which
4 the utility files a rate application as prescribed
5 by Subsection (c) of this section; or (2) for
6 proceedings in which similar relief has also been
7 concurrently sought from the commission under its
8 original jurisdiction, within 120 days from the
9 date such appeal is perfected or the date upon
10 which final action must be taken in the similar
11 proceedings so filed with the commission whichever
12 shall last occur, or (3) in all other proceedings,
13 within 185 days from the date such
14 appeal is perfected, the schedule of rates
15 proposed by the utility shall be deemed to have
16 been approved by the commission and effective upon
17 the expiration of said applicable period. Any
18 rates, whether temporary or permanent, set by the
19 commission shall be prospective and observed from
20 and after the applicable order of the commission,
21 except interim rate orders necessary to effect
22 uniform system-wide rates or to provide the utility
23 the opportunity to avoid confiscation during the
24 period beginning on the date of filing of a
25 petition for review with the commission and ending

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1 on the date of a final order setting rates. The
2 commission shall order interim rates on a prima
3 facie showing by the utility that it has
4 experienced confiscation during that period. For
5 purposes of this subsection, confiscation includes
6 negative cash flow experienced by the utility at
7 any time during the pendency of a rate case
8 proceeding. The utility concerned shall refund or
9 credit against future bills all sums collected
10 during the period of interim rates in excess of the
11 rate finally ordered plus interest at the current
12 rate as finally determined by the commission.

13 SUBTITLE C. RATES AND SERVICES

14 [All references to "commission" shall also apply to municipal
15 governments, as applicable]

16 Sec. 2.101. RATES; METHODS AND ACCOUNTS.

17 (a) The commission shall fix proper and adequate rates
18 and methods of depreciation, amortization, or
19 depletion of the several classes of property of
20 each public utility and shall require every public
21 utility to carry a proper and adequate depreciation
22 account in accordance with such rates and methods
23 and with such other rules and regulations as the
24 commission prescribes. Such rates, methods, and
25 accounts shall

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1 be utilized uniformly and consistently throughout
2 the ratesetting and appeal proceedings.

3 (b) Every public utility shall keep separate accounts
4 to show all profits or losses resulting from the
5 sale or lease of appliances, fixtures, equipment or
6 other merchandise. This profit or loss may not be
7 taken into consideration by the regulatory
8 authority in arriving at any rate to be charged for
9 service by any such public utility, to the extent
10 that such merchandise is not integral to the
11 provision of utility service.

12
13 (c) In determining the allocation of tax savings
14 derived from application of such methods as
15 liberalized depreciation and amortization and the
16 investment tax credit, the use "commission" instead
17 of "regulatory authority" throughout shall
18 equitably balance the interests of present and
19 future customers and shall apportion such benefits
20 between consumers and the public utilities
21 accordingly. Where any portion of the investment
22 tax credit has been retained by a public utility,
23 that same amount shall be deducted from the
24 original cost of the facilities or other addition
25 to the rate base to which the credit applied, to

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1 the extent allowed by the Internal Revenue Code.

2 (d) For the purposes of this section, "public utility"
3 includes "municipally owned utility."

4 Sec. 2.102. MARK-UP. Any cost recovery factor established
5 for recovery of purchased power

6 costs may include the costs incurred by the utility for
7 the purchase of capacity and energy, together with a
8 mark-up added to the costs or other mechanism, as
9 determined by the commission, to reasonably compensate
10 the utility for financial risks, if any, to the utility
11 associated with purchased power obligations and the
12 value added by the utility in making the purchased power
13 available to its customers. The mark-ups and cost
14 recovery factors, if allowed, may be those that are
15 necessary to encourage the utility to include economical
16 purchased power as part of its energy and capacity
17 resource supply plan.

18 Sec. 2.103. REPORTING OF ADVERTISING OR PUBLIC RELATIONS
19 EXPENSES.

20 (a) The commission may require an annual reporting from
21 each utility company of all its expenditures for
22 business gifts and entertainment and for
23 institutional, consumption-inducing, and other
24 advertising or public relations expenses.

25 (b) The commission may not allow as costs or expenses

1 for ratemaking purposes any of these expenditures
2 which the regulatory authority determines not to be
3 in the public interest.

4 (c) The cost of legislative advocacy expenses may not
5 in any case be allowed as costs or expenses for
6 ratemaking purposes.

7 (d) Reasonable charitable or civic contributions may be
8 allowed not to exceed the amount approved by the
9 commission.

10 (e) Reasonable costs of participating in a proceeding
11 under this Act may be allowed, not to exceed the
12 amount approved by the regulatory authority.

13 Sec. 2.104. COSTS. In connection with the setting of rates,
14 the commission shall require that

15 each electric utility shall keep separate accounts of the
16 actual costs, including incremental costs, utilizing a
17 cost methodology which is consistent with the costs
18 methodology federal law under the Federal Power Act as
19 amended (PURPA), and regulations promulgated by the
20 Federal Energy Regulatory Commission.

21 Sec. 2.105. UNLAWFUL RATES, RULES, AND REGULATIONS. It shall
22 be unlawful for

23 any utility to charge, collect, or receive any rate for
24 public utility service or to impose any rule or
25 regulation other than as herein provided.

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1 Sec. 2. 106. **FILING SCHEDULE OF RATES, RULES AND REGULATIONS.**

2 (a) Every public utility shall file with the commission
3 schedules showing all rates which are subject to
4 the original or appellate jurisdiction of the
5 regulatory authority and which are in force at the
6 time for any public utility service, product, or
7 commodity offered by the utility.

8
9 (b) Every public utility shall file with, and as a part
10 of such schedules, all rules and regulating
11 relating to or affecting the rates, public utility
12 service, product, or commodity furnished by such
13 utility. The commission shall treat customer names
14 and addresses, prices, individual customer
15 contracts, and expected load and usage data as
16 trade secrets, but such information may be subject
17 to disclosure under the open records law, Public
18 Records Act.

19 Sec. 2. 107. **STANDARD OF SERVICE.**

20 (a) Every public utility shall furnish such service,
21 instrumentalities, and facilities as shall be safe,
22 adequate, efficient and reasonable in order to
23 provide safe and reliable electric services all
24 ratepayers.

25 (b) The commission after reasonable notice and hearing

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1 had on its own motion or on complaint may:

- 2 (1) ascertain and fix just and reasonable
3 standards, classifications, regulations, or
4 practices to be observed and followed by any
5 or all public utilities with respect to the
6 service to be furnished;
- 7 (2) ascertain and fix adequate and reasonable
8 standards for the measurement of the quantity,
9 quality, pressure, initial voltage, or other
10 condition pertaining to the supply of the
11 service.
- 12 (3) prescribe reasonable regulations for the
13 examination and testing of the service and for
14 the measurement thereof; and
- 15 (4) establish or approve reasonable rules,
16 regulations, specifications, and standards to
17 secure the accuracy of all meters,
18 instruments, and equipment used for the
19 measurement of any service of any public
20 utility.

21 (c) Any standards, classifications, regulations, or
22 practices now or hereafter observed or followed by
23 any public utility shall be filed by it with
24 commission and the same shall continue in force
25 until amended by the public utility or until

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1 changed by the commission as herein provided.

- 2 (d) Notwithstanding any other provision of law all
3 lines owned by a public utility for the
4 transmission and/or distribution of electric energy
5 shall be constructed, operated, and maintained in
6 accordance with the National Electrical Safety Code
7 Standard ANSI (c) (2), as adopted by the American
8 National Safety Institute and in effect at the time
9 of construction.

10 Sec. 2.108. EXAMINATION AND TEST OF EQUIPMENT.

- 11 (a) The commission may examine and test any meter,
12 instrument, or equipment used for the measurement
13 of any service of any public utility and may enter
14 any premises occupied by any public utility for the
15 purpose of making such examinations and tests and
16 exercising any power provided for in this Act and
17 may set up and use on such premises any apparatus
18 and appliances necessary therefor. The public
19 utility
20 shall have the right to be represented at the
21 making of the examinations, tests, and inspections.
22 The public utility and its officers and employees
23 shall facilitate the examinations, tests, and
24 inspections by giving every reasonable aid to the
25 commission and any person or persons designated by

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1 the commission for the duties aforesaid.

2 (b) Any consumer or user may have any meter or
3 measuring device tested by the utility once without
4 charge, after a reasonable period to be fixed by
5 commission by rule, and at shorter intervals on
6 payment of reasonable fees fixed by the commission.
7 The commission shall declare and establish
8 reasonable fees to be paid for other examining and
9 testing of such meters and other measuring devices
10 on the request of the consumer. If the test is
11 requested to be made within the of presumed
12 accuracy as fixed by the commission since the last
13 such test of the same meter or other measuring
14 device, the fee to be paid by the consumer or user
15 at the time of his request shall be refunded to the
16 consumer or user if the meter or measuring device
17 is found unreasonably defective or incorrect to the
18 substantial disadvantage of the consumer or user.
19 If the consumer's request is made at a time beyond
20 the period of presumed accuracy fixed by the
21 commission since the last such test of the same
22 meter or measuring device, the utility shall make
23 the test without charge to the consumer or user.
24

25 SUBTITLE D. PROCEEDINGS BEFORE THE COMMISSION

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1 [All references to "commission" shall also apply to municipal
2 governments, as applicable]

3 Sec. 2.201. **POWER TO INSURE COMPLIANCE; RATE REGULATION.**

4 Subject to the provision of this Act, the commission is hereby
5 vested with all authority and power of the State of New Mexico
6 to insure compliance with the obligations of public utilities
7 in this Act. For this purpose the commission is empowered to
8 fix and regulate rates of public utilities, including rules
9 and regulations for determining the classification of
10 customers and services and for determining the applicability
11 of rates. A rule or order of the commission may not conflict
12 with the rulings of any federal regulatory body. The
13 commission's rules and orders pertaining to the development of
14 competition shall be consistent with the rules and orders of
15 any federal regulatory body.

16 Sec. 2.2011. **COOPERATIVE CORPORATIONS.**

17 (a) An electric cooperative corporation that provides
18 retail electric utility service at distribution
19 voltage is exempt from rate regulation if a
20 majority of the members voting in an election on
21 the deregulation of the electric cooperative vote
22 to approve the exemption and the electric
23 cooperative sends notice of the action to each
24 applicable regulatory authority. An electric
25 cooperative that wants to hold an election under

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1 this section shall send a ballot by mail to each
2 electric cooperative member. The electric
3 cooperative may include the ballot in a monthly
4 billing. The ballot shall provide for voting for
5 or against rate deregulation of the electric
6 cooperative. If the proposition is approved, the
7 electric cooperative shall send each ballot to the
8 commission not later than the 10th day after the
9 date the electric cooperative counts the ballots.
10 Based on the ballots received, the commission shall
11 administratively certify that the electric
12 cooperative is or is not deregulated for ratemaking
13 purposes. An electric cooperative may not hold
14 another election on the issue of being exempt from
15 rate regulation before the first anniversary of the
16 most recent election on the issue. Subsections (b)
17 through (n) of this section apply to an electric
18 cooperative that has elected to be exempt from rate
19 regulation.

20 (b) No regulatory authority shall fix and regulate the
21 rates of an electric cooperative that has made an
22 election under this section to be exempt from rate
23 regulation except as provided for the commission in
24 Subsections (g) and (I) of this section. The
25 commission has exclusive original jurisdiction in

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1 all of the electric cooperative's service area in a
2 proceeding initiated under Subsection (g) or (I) of
3 this section.

4 (c) An electric cooperative may change its rates by:

5 (1) adopting a resolution approving the proposed
6 change;

7 (2) mailing notice of the proposed change to:

8 (A) the commission;

9 (B) each affected municipality;

10 (C) each affected customer, which notice may
11 be included in a monthly billing; and

12 (D) each affected competitor; and

13 (E) each electric utility providing retail
14 service in the electric cooperative's
15 service area or in the adjoining service
16 area; and

17 (3) making available at each of the electric
18 cooperative's business offices for review by
19 all interested persons a cost-of-service study
20 that:

21 (A) is not more than five years old at the
22 time the electric cooperative adopts
23 rates under this subsection; and

24 (B) is based upon a cost methodology as
25 prescribed in Sec. 2.104 of this Act;

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and

(C) bears the certification of a professional engineer or certified public accountant.

(d) (1) The notice required by Subsection (c) of this section must contain the following information:

(A) the increase or decrease in total operating revenues over actual test year revenues or over test year revenues adjusted to annualize the

recovery of changes in the cost of purchased electricity, stated both as a dollar amount and as a percentage;

(B) the classes of utility customers affected and the creation and application of any new rate classes;

(C) the increase or decrease for each class stated as a percentage of actual test year revenues for the class or test year revenues for the class adjusted to annualize the recovery of changes in the cost of purchased electricity;

(D) a statement that the commission may

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review the rate change if the commission receives a petition within 60 days in accordance with Subsection (g) of this section;

(E) the address and telephone number of the commission;

(F) a statement that a customer opposed to the rate change should

notify the electric cooperative in writing of the person's opposition and should provide a return address; and

(G) a statement that members may review a copy of any written opposition the electric cooperative receives.

(2) The electric cooperative may not be required to include additional information in the notice.

(e) The electric cooperative shall make available for review by a member of the cooperative at each of the electric cooperative's business offices a copy of any written opposition to the rate change the electric cooperative receives.

(f) The electric cooperative shall file tariffs with the commission. If the electric cooperative

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1 complies with Subsection (c) of this section, the
2 commission shall approve the tariffs not later than
3 the 10th day after the 60-day period prescribed by
4 Subsection (g) of this section expires unless a
5 review is required under Subsection (g) or (I) of
6 this section. If the tariffs are approved or if a
7 review is not required and the commission fails to
8 act during the period prescribed by this
9 subsection, the change in rates takes effect on the
10 70th day after the date on which the electric
11 cooperative first complies with all requirements of
12 Subsection (c) of this section or on a later date
13 determined by the electric cooperative. Except as
14 provided by Subsection (g) and (I) of this section,
15 the rates of the electric cooperative are not
16 subject to review.

17 (g) The commission shall review a change in rates under
18 this section if, not later than the 60th day after
19 the date the electric cooperative first complies
20 with all requirements of Subsection (c) of this
21 section, the commission receives a petition

22 requesting review signed by:

23 (1) at least 10 percent of the members of the
24 electric cooperative.

25 (2) members of the electric cooperative who

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1 purchased more than 50 percent of the electric
2 cooperative's annual energy sales to a
3 customer class in the test year, provided that
4 the petition included a certification of the
5 purchases;

6 (3) a competitor of the electric cooperative; or

7 (4) an executive officer of an affected electric
8 utility, provided that the petition prescribes
9 the particular class or classes for which a
10 review is requested.

11 (h) When a person files a petition under Subsection (g)
12 of this section, the person shall notify the
13 electric cooperative in writing of the action.

14 (i) The commission may on its own motion review the
15 rates of an electric cooperative if the commission
16 first finds that there is good cause to believe
17 that the electric cooperative is earning more than
18 a reasonable return on overall system revenues or
19 on revenue from a rate class.

20 (j) The commission shall conduct a review under
21 Subsection (g) (1) or (2) of this section or under
22 Subsection (I) of this section in accordance with
23 the other applicable rate-setting principles of
24 this subtitle, except that:

25 (1) The period for review does not begin until the

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- 1 electric cooperative files a rate-filing
2 package as required by commission rules;
- 3 (2) the proposed change may not be suspended
4 during the pendency of the review; however,
5 the electric cooperative shall refund or
6 credit against future bills all sums collected
7 in excess of the rate finally set by the
8 commission, if the commission so orders; and
- 9 (3) the electric cooperative shall observe the
10 rates set by the commission until the rates
11 are changed as provided by this section or by
12 other sections of this Act.
- 13 (k) For a review conducted under Subsection (g) (3) of
14 this section, the electric cooperative shall file
15 with the commission a copy of the cost-of-service
16 study required under Subsection (c) (3) of this
17 section not later than the 10th day after the date
18 the electric cooperative receives from the affected
19 electric utility notice that a petition has been
20 filed. The commission shall determine for each
21 class for which review has been requested the
22 annual cost of providing service to the class, as
23 stated in the electric cooperative's cost-of-
24 service study, and the revenues for the class that
25 would be produced by multiplying the rate set by

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1 the electric cooperative by the annual billing
2 units for the class, as stated in the cost-of-
3 service study. If the electric cooperative
4 proposes a rate class solely for a new customer,
5 the electric cooperative shall estimate the
6 reasonable annual cost of providing service to the
7 class, and the electric cooperative shall base
8 class revenues on reasonable estimates of billing
9 units.

- 10 (1) The rate for each class for which review has been
11 requested under Subsection (g)(3) of this section
12 is suspended during the pendency of the review.
13 The commission shall dismiss the petition and
14 approve the rates if the revenues for the class are
15 equal to or greater than the cost of providing
16 service to the class. The commission shall
17 disapprove the rate if the revenues for the class
18 are less than the cost of providing service to the
19 class; however, this action does not affect
20 reconsideration of the rate as a part of any
21 subsequent ratemaking proceeding. The rate adopted
22 by the electric cooperative is deemed approved and
23 may be placed into effect if the commission fails
24 to make its final determination administratively
25 not later than the 45th day after the date the

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1 electric cooperative files its cost-of-service
2 study.

3 (m) Except as provided by Subsection (a) of this
4 section, the members of an electric cooperative may
5 at any time revoke the electric cooperative's
6 election to be exempt from rate regulation or elect
7 to again be exempt from rate regulation by majority
8 vote of the members voting.

9 (n) This section does not affect the application of
10 other provisions of this Act not directly related
11 to rates or to the authority of the commission to
12 require an electric cooperative to file reports
13 required under this Act or rules adopted by the
14 commission. A service fee or a service rule or
15 regulation set by the electric cooperative under
16 this section must comply with commission rules
17 applicable to all electric utilities. The
18 commission may determine whether an electric
19 cooperative has unlawfully charged, collected, or
20 received a rate for electric utility service.

21 (o) A single customer may seek a review of the rates of
22 an electric cooperative pursuant to Section 2.211
23 of this Act if the customer consumes more than
24 250,000,000 kwh and purchases more than 10 percent
25 of the total energy sales or more than 1-1/2

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1 percent of the total revenues of the electric
2 cooperative in any period of 12 consecutive months
3 within the 36 months preceding the date on which
4 that customer initiates a proceeding under Section
5 2.211 of this Act. The rights under this
6 subsection shall be in addition to rights that a
7 customer has under

8 Subsection (g) of this section, and not in
9 limitation or in lieu of rights under Subsection
10 (g) of this section.

11 (p) An electric cooperative that has elected to be
12 exempt from rate regulation may by resolution adopt
13 retail tariffs or contracts containing charges that
14 are less than average embedded cost retail rates
15 but equal to or greater than the cooperative's
16 marginal cost. The standards of Section 2.052 of
17 this Act, rather than other standards in this
18 section, shall be applied in reviewing rates
19 adopted pursuant to this subsection, however, the
20 cooperative's marginal cost shall be the lowest
21 marginal cost of any of the cooperative's wholesale
22 power suppliers.

23 Sec. 2.202. JUST AND REASONABLE RATES. It shall be the duty
24 of the regulatory authority

25 to insure that every rate made, demanded, or received by

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1 an public utility or by any two or more public utilities
2 jointly shall be just and reasonable. Rates may not be
3 unreasonably preferential, prejudicial, or
4 discriminatory, but shall be sufficient, equitable, and
5 consistent in application to each class of consumers.
6 For ratemaking purposes, the commission may treat two or
7 more municipalities served by a public utility as a
8 single class wherever it deems such treatment to be
9 appropriate.

10 Sec. 2.203. FIXING OVERALL REVENUES.

11 (a) In fixing the rates of a public utility, the
12 regulatory authority shall fix its overall revenues
13 at a level which will permit such utility a
14 reasonable opportunity to earn a reasonable return
15 on its invested capital used and useful in
16 rendering service to the public over and above its
17 reasonable and necessary operating expenses.

18 (b) In fixing a reasonable return on invested capital,
19 the commission shall consider, in addition to other
20 applicable factors, efforts to comply with the
21 utility's most
22 recently approved individual integrated resource
23 plan, the efforts and achievements of such utility
24 in the conservation of resources, the efforts and
25 achievements of such utility in purchasing electric

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1 power from alternative sources, the quality of the
2 utility's services, the efficiency of the utility
3 operations, and the quality of the utility's
4 management.

5 Sec. 2.204. BURDEN OF PROOF. Except as hereafter provided,
6 in any proceeding involving
7 any proposed change of rates, the burden of proof to show
8 that the proposed change, if proposed by the utility, or
9 that the existing rate, if it is proposed to reduce the
10 rate, is just and reasonable shall be on the public
11 utility.

12 Sec. 2.205. COMPONENTS OF INVESTED CAPITAL AND NET INCOME.
13 The
14 components of invested capital and net income shall be
15 determined according to Sections 2.206, 2.207, and 2.208.

16 Sec. 2.206. INVESTED CAPITAL.
17 (a) Utility rates shall be based on the original cost
18 of property used by and useful to the public
19 utility in providing service, including
20 construction work in progress at cost as recorded
21 on the books of the utility.
22 (b) The inclusion of construction work in progress is
23 an exceptional form of rate relief to be granted
24 only upon the demonstration by the utility that
25 such inclusion is necessary to the financial

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1 integrity of the utility. Construction work in
2 progress may not be included in the rate base for
3 major projects under construction to the extent
4 that such projects have been inefficiently or
5 imprudently planned or managed.

6 (c) Original cost shall be the actual money cost, or
7 the actual money value of any
8 consideration paid other than money, of the
9 property at the time it shall have been dedicated
10 to public use, whether by the utility which is the
11 present owner or by a predecessor, less
12 depreciation.

13 (d) Costs shall be determined by the methodology
14 prescribed in Sec. 2.104 of this Act.

15 Sec. 2.207. SEPARATIONS AND ALLOCATIONS. Costs of
16 facilities, revenues, expenses,

17 taxes and reserves shall be separated or allocated as
18 prescribed by the commission.

19 Sec. 2.208. NET INCOME.

20 (a) Net Income. "Net income" means the total revenues
21 of the public utility less all reasonable and
22 necessary expenses as determined by the commission.
23 The commission shall determine expenses and
24 revenues in a manner consistent with this section.

25 (b) Transactions with Affiliated Interests. Payment to

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1 affiliated interests for costs of any services or
2 any property, right, or thing or for interest
3 expense may not be allowed either as capital cost
4 or as expense except to the extent that the
5 commission shall find such payment to be reasonable
6 and necessary for each item or class of items as
7 determined by the commission. Any such finding
8 shall include specific findings of the
9 reasonableness and necessity of each item or class
10 of items allowed and a finding that the price to
11 the utility is no higher than prices charged by the
12 supplying affiliate to its other affiliates or
13 divisions for the same item or class of items or to
14 unaffiliated persons or corporations. In making
15 such findings regarding affiliate transactions,
16 including affiliate transactions subject to Section
17 2.051 of this Act, the commission shall make a
18 determination regarding the extent to which the
19 conditions and circumstances of such transactions
20 are reasonably
21 comparable relative to quantity, terms and
22 conditions, date of contract, and place of delivery
23 and allow for appropriate differences based on that
24 determination. Nothing herein requires such
25 findings to be made prior to the inclusion of such

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1 payments in the utility's charges to consumers so
2 long as there is a mechanism for making such
3 charges subject to refund pending the making of
4 such findings.

5 (c) **Income Taxes.** If the public utility is a member of
6 an affiliated group that is eligible to file a
7 consolidated income tax return and if it is
8 advantageous to the public utility to do so, income
9 taxes shall be computed as though a consolidated
10 return had been so filed and the utility had
11 realized its fair share of the savings resulting
12 from the consolidated return, unless it is shown to
13 the satisfaction of the commission that it was
14 reasonable to choose not to consolidate returns.
15 The amounts of income taxes saved by a consolidated
16 group of which a public utility is a member by
17 reason of the elimination in the consolidated
18 return of the intercompany profit on purchases by
19 the public utility from an affiliate shall be
20 applied to reduce the cost of the property or
21 services so purchased. The investment tax credit
22 allowed against federal income taxes, to the extent
23 retained by the utility, shall be applied as a
24 reduction in the rate-based contribution of the
25 assets to which such credit applies, to the extent

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1 and at such rate as allowed by the Internal Revenue
2 Code.

3 (d) Expenses Disallowed. The commission may not
4 consider for ratemaking purposes the following
5 expenses.

6 (1) legislative advocacy expenses, whether made
7 directly or indirectly, including but not
8 limited to legislative advocacy expenses
9 included in trade
10 association dues;

11 (2) payments, except those made under an insurance
12 or risk-sharing arrangement executed before
13 the date of loss, made to cover costs of an
14 accident, equipment failure, or negligence at
15 utility facility owned by a person or
16 governmental body not selling power inside the
17 State of New Mexico;

18 (3) costs of processing a refund or credit under
19 Subsection (e) of Section 2.212 of this Act;
20 or

21
22 (4) any expenditure found by the commission to be
23 unreasonable, unnecessary, or not in the
24 public interest, including but not limited to
25 executive salaries, advertising expenses,

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1 legal expenses, and civil penalties or fines.

2 (e) Rules. The commission may promulgate reasonable
3 rules and regulations with respect to the allowance
4 or disallowance of any expenses for ratemaking
5 purposes.

6 Sec. 2. 209. AGREEMENTS WITH QUALIFYING FACILITIES FOR
7 PURCHASES OF
8 CAPACITY.

9 (a) To further the legislature's policy of encouraging
10 efficient sources of electric energy and
11 competition, each electric utility shall negotiate,
12 execute and perform in good faith agreements to
13 purchase capacity from qualified facilities, a
14 qualifying cogenerator or a qualifying small power
15 producer as defined in the Federal owner Act as
16 amended, PUPA.

17 Sec. 2. 210. SELF-INSURANCE.

18 (a) A public utility may self-insure all or a portion
19 of its potential liability or catastrophic property
20 loss, including windstorm, fire, and explosion
21 losses which
22 could not have been reasonably anticipated and
23 included under operating and maintenance expenses.
24 The commission shall approve a self-insurance plan
25 under this section if it finds that the coverage is

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1 in the public interest and the plan is a lower cost
2 alternative to purchasing commercial insurance,
3 considering all costs, and that ratepayers will
4 receive the benefits of that saving.

5 (b) In computing a utility's reasonable and necessary
6 expenses under Section 2.208 of this Act, the
7 commission shall allow as a necessary expense the
8 funds credited to reserve accounts for the self-
9 insurance, to the extent the regulatory authority
10 finds it in the public interest. After the reserve
11 account is established, the commission shall
12 consider if the reserve account has a surplus or
13 shortage in determining the utility's rate base. A
14 surplus in the reserve account will exist if the
15 charges against the reserve account are less than
16 the funds credited to the reserve. A shortage in
17 the reserve account will exist if the charges
18 against the account are greater than the funds
19 credited to the reserve. The commission shall
20 subtract any surplus from and add any shortage to
21 the rate base.

22 (c) The commission shall determine reasonableness under
23 Subsection (b) of this section from information
24 provided at the time the self-insurance plan and
25 reserve account are established and upon the filing

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- 1 of each rate case by a utility that has such a
- 2 fund.
- 3 (d) The commission shall adopt rules governing self-
- 4 insurance under this section.
- 5 (e) The allowance for self-insurance under this Act for
- 6 ratemaking purposes will not be applicable to
- 7 nuclear plant investment.

8 Sec. 2.210. UNREASONABLE OR VIOLATIVE EXISTING RATES;
9 INVESTIGATING

10 COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE.

- 11 (a) Whenever the commission, after reasonable notice
- 12 and hearing, on its own motion or on complaint by
- 13 any affected person, finds that the existing rates
- 14 of any public utility for any service are
- 15 unreasonable or in any way in violation of any
- 16 provision of law, the commission shall determine
- 17 the just and reasonable rates, including maximum or
- 18 minimum rates, to be thereafter observed and in
- 19 force and shall fix the same by order to be served
- 20 on the public utility, and such rates shall
- 21 constitute the legal rates of the public utility
- 22 until changed as provided in this Act.
- 23 (b) Whenever a public utility does not itself produce
- 24 or generate that which it distributes, transmits,
- 25 or furnishes to the public for compensation but

1 obtains the same from another source, the
2 commission shall have the power and authority to
3 investigate the cost of such production or
4 generation in any investigation of the
5 reasonableness of the rates of such public utility,
6 provided such investigation does not interfere with
7 federal jurisdiction of qualified utilities.

8 (c) Not later than the 120th day after the date the
9 commission notifies the utility that the commission
10 has decided to proceed with an inquiry under this
11 section relating to the rates of the utility, the
12 utility shall file a rate-filing package with the
13 commission. The commission may grant an extension
14 of the 120-day period or waive the rate-filing
15 package requirement on agreement of the parties.
16 The commission shall make a final determination
17 concerning the matter not later than the 185th day
18 after the date the utility files the rate-filing
19 package. However, the 185-day period is extended
20 two days for each one day of actual hearing on the
21 merits of the case that exceeds 15 days.

22 (d) At any time after an initial complaint is filed
23 under this section, the commission may issue an
24 interim order fixing temporary rates for the
25 utility that will continue until a final

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1 determination on the matter is made. On issuance
2 of a final order, the commission may require the
3 utility to refund to customers or to credit against
4 future bills all sums collected during the period
5 in which those temporary rates were in effect that
6 are in excess of the rate finally ordered, plus
7 interest at the current rate as finally determined
8 by the commission or, if the amounts collected
9 during the period in which the temporary rates were
10 in effect are less than the amounts that would have
11 been collected under the rate finally ordered, the
12 commission shall authorize the utility to surcharge
13 bills to recover the difference between those
14 amounts, plus interest on the amount of the
15 difference at the current rate as finally
16 determined by the commission.

17 (e) If the 185-day period has been extended as provided
18 by Subsection (c) of this section and the
19 commission has not issued a final order or fixed
20 temporary rates on or before the 185th day, the
21 rates charged by the utility on that 185th day
22 automatically become temporary rates. On issuance
23 of a final order, the commission shall require the
24 utility to refund to customers or to credit against
25 future bills all sums collected during the period

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1 in which those temporary rates were in effect that
2 are in excess of the rate finally ordered, plus
3 interest at the current rate as finally determined
4 by the commission or, if the amounts collected
5 during the period in which the temporary rates were
6 in effect are less than the amounts that would have
7 been collected under the rate finally ordered, the
8 commission shall authorize the utility to
9 surcharge bills to recover the difference between
10 those amounts, plus interest on the amount of the
11 difference at the current rate as finally
12 determined by the commission.

13 Sec. 2.211. STATEMENT OF INTENT TO CHANGE RATES; MAJOR
14 CHANGES;

15 HEARING; SUSPENSION OF RATE SCHEDULE; DETERMINATION OF
16 RATE LEVEL

17 (a) A utility may not make changes in rates except by
18 filing a statement of intent with the commission
19 having original jurisdiction at least 35 days prior
20 to the effective date of the proposed change. The
21 statement of intent shall include proposed
22 revisions of tariffs and schedules and a statement
23 specifying in detail each proposed change, the
24 effect the proposed change is expected to have on
25 the revenues of the company, the classes and

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numbers of utility consumers affected, and such other information as may be required by the commission's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks prior to the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change and by mail to such other affected persons as may be required by the commission's rules and regulations. The commission may waive the publication of notice requirement prescribed by this subsection in a proceeding that involves a rate reduction for all affected ratepayers only. The applicant shall give notice of the proposed rate change by mail to all affected utility customers. The commission by rule shall also define other proceedings for which the publication of notice requirement prescribed by this subsection may be waived on a showing of good cause, provided that a waiver may not be granted in any proceeding

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1 involving a rate increase to any class or category
2 of ratepayer.

3 (b) The commission, for good cause shown, may, except
4 in the case of major changes, allow changes in rate
5 to take effect prior to the end of such 35-day
6 period under such conditions as it may prescribe,
7 subject to suspension as provided herein. All such
8 changes shall be indicated immediately upon its
9 schedules by such utility. "Major changes" shall
10 mean an increase in rates which would increase the
11 aggregate revenues of the applicant more than the
12 greater of \$100,000 or 2-1/2 percent, but does not
13 include changes in rates allowed to go into effect
14 by the commission or made by the utility pursuant
15 to an order of the commission after hearings held
16 upon notice to the public.

17 (c) Whenever there is filed with the commission any
18 schedule modifying or resulting in a change in any
19 rates then in force, the commission shall on
20 complaint by any affected person or may on its own
21 motion, at any time within 30 days from the date
22 when such change would or has become effective,
23 and, if it so orders, without answer or other
24 formal pleading by the utility, but on reasonable
25 notice, including notice to the governing bodies of

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1 all affected municipalities and counties, enter on
2 a hearing to determine the propriety of such
3 change. The commission shall hold such a hearing
4 in every case in which the change constitutes a
5 major change in rates, provided that an informal
6 proceeding may satisfy this requirement if a
7 complaint has not been received before the
8 expiration of 45 days after notice of the
9 change shall have been filed. In each case where
10 the commission determines it is in the public
11 interest to collect testimony at a regional hearing
12 for inclusion in the record, the commission shall
13 hold a regional hearing at an appropriate location.
14 A regional hearing is not required in a case
15 involving a member-owned utility, unless the
16 commission determines otherwise.

17 (d) Pending the hearings and decision, the local
18 commission, after delivery to the affected utility
19 of a statement in writing of its reasons therefore,
20 may suspend the operation of the schedule for a
21 period not to exceed 90 days beyond the date on
22 which the schedule of rates would otherwise go into
23 effect, and the commission may suspend the
24 operation of the schedule for a period not to
25 exceed 150 days beyond the date on which the

1 schedule would otherwise go into effect. If the
2 commission does not make a final determination
3 concerning any schedule of rates prior to
4 expiration of period or periods of suspension, the
5 schedule shall be deemed to have been approved by
6 the commission. However, the 150-day period shall
7 be extended two days for each one day of actual
8 hearing on the merits of the case that exceeds 15
9 days. This approval is subject to the authority of
10 the commission thereafter to continue a hearing in
11 progress. The commission may in its discretion fix
12 temporary rates for any period of suspension under
13 this section. During the suspension by the
14 commission as above provided, the rates in force
15 when the suspended schedule was filed shall
16 continue in force unless the commission shall
17 establish a temporary rate. The commission shall
18 give preference to the hearing and decision of
19 questions arising under this section over all other
20 questions pending before it and decide the same as
21 speedily as possible.

- 22 (e) If the 150-day period has been extended, as
23 provided for in Subsection 9d) of this section, and
24 the commission fails to make its final
25 determination of rates within 150 days from the

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1 date that the proposed change otherwise would have
2 gone into effect, the utility concerned may put a
3 changed rate, not to exceed the proposed rate, into
4 effect throughout all areas in which the utility
5 sought to change its rates, including the areas
6 over which the commission is exercising its
7 appellate and its original jurisdiction, on the
8 filing with the commission of a bond payable to the
9 commission in an amount and with sureties approved
10 by the commission conditioned upon refund and in a
11 form approved by the commission. The utility
12 concerned shall refund or credit against future
13 bills all sums collected during the period of
14 suspension in excess of the rate finally ordered
15 plus interest at the current rate as finally
16 determined by the commission.

17 (f) If, after hearing, the commission finds the rates
18 to be unreasonable or in any way in violation of
19 any provision of law, the commission shall
20 determine the level of rates to be charged or
21 applied by the utility for the service in question
22 and shall fix the same by order to be served upon
23 the utility; these rates are thereafter to be
24 observed until changed as provided by this Act.

25 (g) (1) Except as permitted by Section 2.051 of this

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1 Act, a rate or tariff set by the commission
2 may not authorize a utility to automatically
3 adjust and pass through to its customers
4 changes in fuel or other costs of the utility.

- 5 (2) (A) Subdivision (1) of this subsection does
6 not prohibit the commission from
7 reviewing and providing for adjustments
8 of a utility's fuel factor. The
9 commission by rule shall implement
10 procedures that
11 provide for the timely adjustment of a
12 utility's fuel factor, with or without a
13 hearing. The procedures shall provide
14 that the findings required by Section
15 2.208(b) of this regarding fuel
16 transactions with affiliated interests
17 are made in a fuel reconciliation
18 proceeding or in a rate case filed under
19 Subsection (a) of this section or under
20 Section 2.210 of this Act. The
21 procedures shall provide an affected
22 party notice and the opportunity to
23 request a hearing before the commission.
24 However, the commission may adjust a
25 utility's fuel factor without a hearing

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if the commission determines that a hearing is not necessary. If the commission holds a hearing, the commission may consider any evidence that is appropriate in the public interest at such hearing. The commission shall render a timely decision approving, disapproving, or modifying the adjustment to the utility's fuel factor.

(B) The commission by rule shall provide for the reconciliation of a utility's fuel costs on a timely basis.

(C) A proceeding under this subsection may not be considered a rate case under this section.

(3) (A) This subsection applies only to increases or decreases in the cost of purchased electricity which have been:
(i) accepted by a federal regulatory authority; or
(ii) approved after a hearing by the commission.

(B) The commission may, consistent with federal law and regulations

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utilize any appropriate method to provide for the adjustment of the cost of purchased electricity upon such terms and conditions as the commission may determine. Such purchased electricity costs may be recovered concurrently with the effective date of the changed costs to the purchasing utility or as soon thereafter as is reasonably practical.

- (c) The commission may also provide for a mechanism to allow any public utility that has a noncontiguous geographical service area, and that purchases power for resale that noncontiguous service area from public utilities that are not members of the Electric Reliability Council of New Mexico, to recover purchased power cost for that area in a manner that reflects the purchased power cost for that specific geographical noncontiguous area. The commission may not, however, require such a mechanism for any electric cooperative corporation unless requested by the electric cooperative corporation.

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1 (h) The commission on its own motion or on the petition
2 of a utility shall provide for the adjustment of a
3 utility's billing to reflect any increase or
4 decrease of tax liability of the utility to the
5 state. That is attributable to activities that are
6 subject to the jurisdiction of the commission. Any
7 adjustment to billings under this section must be
8 apportioned pro-rata to all types and classes of
9 service provided by the utility and is effective
10 only until the commission alters the adjustment as
11 provided by this subsection or enters an order for
12 the utility under this Section or Section 2.210 of
13 this Act. The adjustment of billings must be made
14 effective at the same time as the increase or
15 decrease of tax liability, or as soon after as is
16 reasonably practical. Each year after any original
17 adjustment, the commission shall review the
18 utility's increase or decrease of tax liability,
19 and alter the adjustment to reflect the increase or
20 decrease. A proceeding under this subsection is
21 not a rate case under this section.

22 Sec. 2.212. RATES FOR AREAS NOT WITHIN MUNICIPALITY. Public
23 utility rates for
24 areas not within any municipality may not exceed without
25 commission approval 115

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1 percent of the average of all rates for similar services
2 of all municipalities served by the same utility within
3 the same county.

4 Sec. 2. 213. UNREASONABLE PREFERENCE OR PREJUDICE AS TO RATES
5 OR

6 SERVICES. A public utility may not, as to rates or
7 services, make or grant any unreasonable preference or
8 advantage to any corporation or person within any
9 classification or subject any corporation or person
10 within any classification to any unreasonable prejudice
11 or disadvantage. A public utility may not establish and
12 maintain any unreasonable differences as to rates of
13 service either as between localities or as between
14 classes of service. Charges to individual customers for
15 retail or wholesale electric service that are less than
16 the rate approved by the commission shall not constitute
17 an impermissible difference, preference, or advantage.

18 Sec. 2. 2131. DISCOUNTED RATES FOR CERTAIN STATE INSTITUTIONS
19 OF HIGHER

20 EDUCATION. Notwithstanding any other provisions of this
21 Act, each public utility and municipally owned utility
22 shall discount charges for electric service provided to
23 any facility any four-year state university, upper-level
24 institution, community college, or college. The
25 discount shall be a 20 percent reduction of the

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1 utility's base rates that otherwise would be rendered
2 under the applicable tariffed rate. However if a 20
3 percent discount results in a reduction greater than one
4 percent of the public or municipally owned utility's
5 total annual revenues or if the municipally owned
6 utility, as of January 1, 1999, discounts base commercial
7 rates for electric service provided to all four-year
8 state universities or colleges in its service area by 20
9 percent or more, the utility shall be exempt from the
10 provisions of this section. Each public utility shall
11 file tariffs with the commission reflecting the discount
12 within 30 days of the effective date of this section.
13 Such initial tariff filing shall not be considered a rate
14 change for purposes of Section 2.211 of this Act. This
15 section does not apply to rates charged to a state
16 institution of higher education by a municipally owned
17 utility which provides a discounted rate to the state for
18 electric services below rates in effect on January 1,
19 1999, and which discounted rates provide a greater
20 financial discount to the state than is provided to the
21 state institution of higher education through the
22 discount provided by this section. An investor-owned
23 public utility may not recover the assigned and allocated
24 costs of serving a state university or college which
25 receives a discount under this section from residential

1 customers or any other customer class.

2 Sec. 2.214. EQUALITY OF RATES AND SERVICES.

3 (a) A public utility may not, directly or indirectly,
4 by an device whatsoever or in any manner, charge,
5 demand, collect, or receive from any person a
6 greater or less compensation for any service
7 rendered or to be rendered by the utility than that
8 prescribed in the schedule of rates of the public
9 utility applicable thereto when filed in the manner
10 provided in this Act, nor may any person knowingly
11 receive or accept any service from a public utility
12 for a compensation greater or less than that
13 prescribed in the schedules except as to changes
14 approved by the commission in Sec. 2.001 (c) of
15 this Act.

16 (b) Nothing in this Act shall prevent a cooperative
17 corporation from returning to its members the whole
18 or any part of the net earnings resulting from its
19 operations in proportion to their purchases from or
20 through the corporation.

21 (c) Notwithstanding any other provision of this Act, if
22 the commission has approved as of January 1, 1999,
23 the establishment of a separate rate class for
24 electric service for a university or college and
25 has grouped public schools in a separate rate

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1 class, the commission shall include community
2 colleges in the rate class with public school
3 customers.

4 Sec. 2.215. DISCRIMINATION; RESTRICTION ON COMPETITION. A
5 public utility may

6 not discriminate against any person or corporation that
7 sells or leases equipment or performs services in
8 competition with the public utility, nor may any public
9 utility engage in any other practice that tends to
10 restrict or impair such competition.

11 Sec. 2.216. PAYMENTS IN LIEU OF TAXES. Payments made in lieu
12 of taxes by a public

13 utility to the municipality by which it is owned may not
14 be considered an expense of operation for the purpose of
15 determining, fixing, or regulating the rates to be
16 charged for the provision of utility service to a school
17 district or hospital district. Rates received by a
18 public utility from a school district or hospital
19 district may not be used to make or to cover the cost of
20 making payments in lieu of taxes to the municipality by
21 which the public utility is owned.

22
23 SUBTITLE E. CERTIFICATES OF CONVENIENCE AND NECESSITY

24 Sec. 2.251. DEFINITION. For the purposes of this subtitle
25 only, "retail public utility" means

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1 any person, corporation, municipality, political
2 subdivision or agency, or cooperative corporation, now or
3 hereafter operating, maintaining, or controlling in this
4 state facilities for providing retail public utility
5 service except that a qualifying cogenerator selling
6 electric energy at retail to the sole purchaser of the
7 cogenerator's thermal output pursuant to Section 2.052 of
8 this Act shall not for that reason be considered a retail
9 public utility. The term also does not include those
10 exempt under Sec. 2.001 of this Act.

11
12 Sec. 2.252. CERTIFICATE REQUIRED.

- 13 (a) A public utility may not in any way render service
14 directly or indirectly to the public under any
15 franchise or permit without first having obtained
16 from the commission a certificate that the present
17 or future public convenience and necessity require
18 or will require such installation, operation, or
19 extension.
- 20 (b) Except as otherwise provided in this subtitle, a
21 retail public utility may not furnish, make
22 available, render, or extend retail public utility
23 service to any area to which retail utility service
24 is being lawfully furnished by another retail
25 public utility without first having obtained a

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1 certificate of public convenience and necessity
2 that includes the area in which the consuming
3 facility is located.

4 Sec. 2.253. EXCEPTIONS FOR EXTENSION OF SERVICE.

- 5 (a) A public utility is not required to secure a
6 certificate of public convenience and necessity
7 for:
- 8 (1) an extension into territory contiguous to that
9 already served by it and not receiving similar
10 service from another public utility and not
11 within the area
12 of public convenience and necessity of
13 another utility of the same kind;
 - 14 (2) an extension within or to territory already
15 served by it or to be served by it under a
16 certificate of public convenience and
17 necessity; or
 - 18 (3) operation, extension, or service in progress
19 on January 1, 1999.
- 20 (b) Any extensions allowed by Subsection (a) of this
21 section shall be limited to devices for
22 interconnection of existing facilities or devices
23 used solely for transmitting public utility
24 services from existing facilities to customers of
25 retail utility service.

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Sec. 2. 254. APPLICATIONS; MAPS; EVIDENCE OF CONSENT.

- (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.
- (b) On or before 90 days after January 1, 1999, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.
- (c) Each applicant for a certificate shall file with the commission such evidence as is required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

Sec. 2. 255. NOTICE AND HEARING; ISSUANCE OR REFUSAL; FACTORS CONSIDERED; FILING OF NOTICE OF INTENT BY ELECTRIC UTILITIES; TIME FOR APPROVAL OR DENIAL OF NEW TRANSMISSION FACILITIES.

- (a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested

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1 parties, and, if
2 requested, shall fix a time and place for a
3 hearing and give notice of the hearing. Any person
4 interested in the application may intervene at the
5 hearing.

6 (b) The commission may grant applications and issue
7 certificates only if the commission finds that the
8 certificate is necessary for the service,
9 accommodation, convenience, or safety of the
10 public. The commission may issue the certificate
11 as prayed for, refuse to issue it, or issue it for
12 the construction of a portion only of

13
14 the contemplated system or facility or extension
15 thereof or for the partial exercise only of the
16 right or privilege.

17 (c) Certificates of convenience and necessity shall be
18 granted on a nondiscriminatory basis after
19 consideration by the commission of the adequacy of
20 existing service, the need for additional service,
21 the effect of the granting of a certificate on the
22 recipient of the certificate, on any public utility
23 of the same kind already serving the proximate
24 area, and on such factors as community values,
25 recreational and park areas, historical and

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1 aesthetic values, environmental integrity, and the
2 probable improvement of service or lowering of cost
3 to consumers in such area resulting from the
4 granting of such certificate.

- 5 (d) This section does not apply to a certificate of
6 convenience and necessity for an electric
7 generating plant that is requested under Section
8 2.051 of this Act. The commission may grant a
9 certificate of convenience and necessity for an
10 electric generating plant only in accordance with
11 Section 2.051 of this Act.
- 12 (e) If the application for a certificate of convenience
13 and necessity involves new transmission facilities,
14 the commission shall approve or deny the
15 application within one year after the date the
16 application is filed. If the commission does not
17 approve
18 or deny the application within one year after the
19 application is filed. If the commission does not
20 approve or deny the application before this
21 deadline, any party may seek a writ of mandamus in
22 a district court of Santa County to compel the
23 commission to make a decision on the application.
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1 Sec. 2.256. **AREA INCLUDED WITHIN CITY, TOWN, OR VILLAGE.**

2 (a) If an area has been or shall be included within the
3 boundaries of a city, town, or village as the
4 result of annexation, incorporation, or otherwise,
5 all public utilities certified or entitled to
6 certification under this Act to provide service or
7 operate facilities in such area prior to the
8 inclusion shall have the right to continue and
9 extend service in its area of public convenience
10 and necessity within the annexed or incorporated
11 area, pursuant to the rights granted by its
12 certificate and this Act.

13 (b) Except as provided in this Act or by federal law, a
14 public utility shall have the right to continue and
15 extend service within its area of public
16 convenience and necessity and to utilize the roads,
17 streets, highways, alleys, and public property for
18 the purpose of furnishing such retail utility
19 service, subject to the authority of the governing
20 body of a municipality to require any public
21 utility, at its own expense, to relocate its
22 facilities to permit the widening or straightening
23 of streets by giving to the public utility 30 days'
24 notice and specifying the new location for the
25 facilities along the right-of-way of the street or

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1 streets.

2 (c) This section may not be construed as limiting the
3 power of cities, towns, and villages to incorporate
4 or extend their boundaries by annexation, nor may
5 this section be construed as prohibiting any city
6 or town from levying taxes and other special
7 charges for the use of the streets and alleys.

8 Sec. 2. 257. **CONTRACTS VALID AND ENFORCEABLE.** Contracts
9 between retail public
10 utilities designating areas to be served and customers to
11 be served by those utilities, when approved by the
12 commission, shall be valid and enforceable and shall be
13 incorporated into the appropriate areas of public
14 convenience and necessity.

15 Sec. 2. 258. **PRELIMINARY ORDER FOR CERTIFICATE.** If a public
16 utility desires to
17 exercise a right or privilege under a franchise or permit
18 which it contemplates securing but which has not as yet
19 been granted to it, such public utility may apply to the
20 commission for an order preliminary to the issuance of
21 the certificate. The commission may thereupon make an
22 order declaring that it will, on application, under such
23 rules as it prescribes, issue the desired certificate on
24 such terms and conditions as it designates, after the
25 public utility has obtained the contemplated franchise or

1 permit. On presentation to the commission of evidence
2 satisfactory to it that the franchise or permit has been
3 secured by the public utility, the commission shall issue
4 the certificate.

5 Sec. 2. 259. CONTINUOUS AND ADEQUATE SERVICE; DISCONTINUANCE,
6 REDUCTION, OR IMPAIRMENT OF SERVICE.

7 (a) Except as provided by this section, the holder of
8 any certificate of public convenience and necessity
9 shall serve every consumer within its certified
10 area and shall render continuous and adequate
11 service within the area or areas.

12 (b) Unless the commission issues a certificate that
13 neither the present or future convenience and
14 necessity will be adversely affected, the holder of
15 a certificate may not discontinue, reduce, or
16 impair service to a certified service area or part
17 thereof except for:

- 18 (1) nonpayment of charges;
19 (2) nonuse; or
20 (3) other similar reasons in the usual course of
21 business.

22
23
24 (c) Any discontinuance, reduction, or impairment of
25 service, whether with or without approval of the

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1 commission, shall be in conformity with and subject
2 to such conditions, restrictions, and limitations
3 as the commission shall prescribe.

4 Sec. 2.260. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE. If
5 the commission

6 determines that a purchaser, assignee, or lessee is
7 capable of rendering adequate service, a public utility
8 may sell, assign, or lease a certificate of public
9 convenience and necessity or any rights obtained under
10 the certificate. The sale, assignment, or lease shall be
11 on the conditions prescribed by the commission.

12 Sec. 2.261. INTERFERENCE WITH OTHER UTILITY. If a public
13 utility in constructing or

14 extending its lines, plant, or system interferes or
15 attempts to interfere with the operation of a line,
16 plant, or system of any other utility or qualifying
17 facility, the commission may issue an order prohibiting
18 the construction or extension or prescribing terms and
19 conditions for locating the subject lines, plants, or
20 systems.

21 Sec. 2.262. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE.

22 After notice

23 and hearing, the commission may:

- 24 (1) order a public utility to provide specified
25 improvements in its service in a defined area, if

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1 service in such area is inadequate or is
2 substantially inferior to service in a comparable
3 area and it is reasonable to require the company to
4 provide such improved service; and

- 5 (2) order two or more public utilities to establish
6 specified facilities for the interconnecting
7 service.

8 Sec. 2.263. REVOCATION OR AMENDMENT OF CERTIFICATE.

- 9 (a) The commission at any time after notice and hearing
10 may revoke or amend any certificate of convenience
11 and necessity if it finds that the certificate
12 holder has never provided or is no longer providing
13 service in the area, or part of the area, covered
14 by the certificate.

- 15 (b) When the certificate of any public utility is
16 revoked or amended, the commission may require one
17 or more public utilities to provide service in the
18 area in question.

19
20 TITLE III. TELECOMMUNICATIONS UTILITIES

21 SUBTITLE A. GENERAL PROVISIONS

22 Sec. 3.001. LEGISLATIVE POLICY CONCERNING REGULATION OF AND
23 COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY. The
24 legislature finds that significant changes have occurred
25 in the telecommunications and telephone industry over the

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1 past thirty years, including regulatory and court
2 decisions and the passage of the Federal
3 Telecommunications Act of 1996. The legislature hereby
4 declares that it is the policy of this state to promote
5 diversity of telecommunications providers and
6 interconnectivity and to encourage a fully competitive
7 telecommunications marketplace while protecting and
8 maintaining The wide availability of high quality,
9 interoperable, standards-based telecommunications
10 services at affordable rates. These goals are best
11 achieved by legislation that brings telecommunications
12 regulation into The modern era by guaranteeing The
13 affordability of basic telephone service in a
14 competitively neutral manner, while fostering free market
15 competition within The telecommunications industry. The
16 legislature further finds that The technological
17 advancements, advanced telecommunications infrastructure,
18 and increased customer choices for telecommunications
19 services generated by a truly competitive market will
20 raise The living standards of New Mexicans by enhancing
21 economic development and improving The delivery of
22 education, health, and other public and private services
23 and therefore play a critical role in New Mexico's
24 economic future. It is The policy of this state to
25 require The commission to do those things necessary to

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1 enhance The development of competition by adjusting
2 regulation to match The degree of competition in The
3 marketplace, thereby reducing The cost and burden of
4 regulation and maintaining protection of markets that are
5 not competitive. It is further The policy of this state
6 to ensure that high quality telecommunications services
7 are available, accessible, and usable by individuals with
8 disabilities, unless making The services available,
9 accessible, or usable would result in an undue burden,
10 including unreasonable cost or technical feasibility, or
11 would have an adverse competitive effect. However, the
12 legislature recognizes that the strength of competitive
13 forces vary widely between markets, products and
14 services. Therefore, to foster, encourage and accelerate
15 The continuing development and emergence of a competitive
16 telecommunications environment and infrastructure, The
17 legislature declares that new rules, policies, and
18 principles be formulated and applied to protect The
19 public interest and to permit a deregulatory framework
20 that will cause an orderly and expeditious transition
21 from a regulated telecommunications industry to a
22 competitive industry..

23 Sec. 3.002 DEFINITIONS. In this title:

24 (1) "Basic local telephone service" means:

25 (A) flat rate residential and business local

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- 1 exchange telephone service, including primary
2 directory listings;
- 3 (B) tone dialing service;
- 4 (c) access to operator services;
- 5 (D) access to directory assistance services;
- 6 (E) access to 911 service;
- 7 (F) the ability to report service problems seven
8 days a week;
- 9 (G) lifeline and tel-assistance services; and
- 10 (H) any other service the commission, after a
11 hearing, determines should be included in
12 basic local telephone service.
- 13 (2) "Costs" shall mean the costs of a
14 telecommunications provider as determined by that
15 cost methodology approved by federal agencies or
16 courts, pursuant to the Telecommunications Act of
17 1996.
- 18 (3) "Dominant carrier" means:
- 19 (A) a provider of any particular communication
20 service which is provided in whole or in part
21 over a telephone system who as to such service
22 has sufficient market power in a
23 telecommunications market as determined by the
24 commission to enable such provider to control
25 prices in a manner adverse to the public

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1 interest, including consumers and actual or
2 potential competitors, for such service in
3 such market;

4 (B) any provider who provided local exchange
5 telephone service within a certificated
6 exchange area on January 1, 1996, as to such
7 service and as to any other service for which
8 a competitive alternative is not available in
9 a particular geographic market; and

10 (C) any provider of local exchange telephone
11 service within a certificated exchange area as
12 to intraLATA long distance message
13 telecommunications service and similar inter-
14 city services, WATS, private line, etc., which
15 is originated by dialing the access code "1+"
16 so long as the use of that code for the
17 origination of "1+" intraLATA calls within its
18 certificated exchange area is exclusive to
19 that provider. A telecommunications market
20 shall be statewide until January 1, 1999.
21 After this date the commission may, if it
22 determines that the public interest will be
23 served, establish separate markets within the
24 state. The commission shall hold such
25 hearings and require such

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1 evidence as is necessary to carry out the
2 public purpose of this Act and to determine
3 the need and effect of establishing separate
4 markets. Any such provider determined to be a
5 dominant carrier as to a particular
6 telecommunications service in a market may not
7 be presumed to be a dominant carrier of a
8 different telecommunications service in that
9 market.

- 10 (4) "Incumbent local exchange company" means a local
11 exchange company that has a certificate of
12 convenience and necessity on January 1, 1996.
- 13 (5) "Least cost technology" means the technology, or
14 mix of technologies, that would be chosen in the
15 long run as the most economically efficient choice,
16 provided that the choice of least cost technologies
17 is:
- 18 (A) restricted to technologies that are currently
19 available on the market and for which vendor
20 prices can be obtained;
 - 21 (B) consistent with the level of output necessary
22 to satisfy current demand levels for all
23 services using the basic network function in
24 question; and
 - 25 (C) consistent with overall network design and

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1 topology requirements.

2 (6) "Local exchange company" means a telecommunications
3 utility that has been granted either a certificate
4 of convenience and necessity or a certificate of
5 operating authority to provide local exchange
6 telephone service, basic local telephone service,
7 or switched access service within the state or
8 other telecommunications provider which, pursuant
9 to federal law, has obtained the agreements for
10 interconnections to provide services within the
11 exchange or Local Access and Transport Area (LATA).

12 (7) "Local exchange telephone service" means
13 telecommunications service provided
14 within an exchange to establish connections
15 between customer premises within the exchange,
16 including connections between a customer premises
17 and a long distance provider serving the exchange.
18 The term includes tone dialing, service connection
19 charges, and directory assistance services when
20 offered in connection with basic local telephone
21 service and interconnection with other service
22 providers. The term includes, but is not limited
23 to, basic local telephone service. The term does
24 also include the provision of any other services
25 within an exchange, including the following

1 services, whether offered on an intraexchange or
2 interexchange basis:

- 3 (A) central office based PBX-type services;
- 4 (B) billing and collection services;
- 5 (C) high-speed private line services of 1.544
6 megabits or greater;
- 7 (D) customized services;
- 8 (E) private line and virtual private line
9 services;
- 10 (F) resold or shared local exchange telephone
11 services;
- 12 (G) dark fiber services;
- 13 (H) non-voice data transmission service when
14 offered as a separate service and not as a
15 component of basic local telecommunications
16 service;
- 17 (I) dedicated or virtually dedicated access
18 services; and
- 19 (J) any other service authorized or permitted by
20 federal law.

21 (8) "Pricing flexibility" includes customer specific
22 contracts, volume, term, and discount pricing, zone
23 density pricing, packaging of services, and other
24 promotional pricing flexibility. Discounts and
25 other forms of pricing flexibility may not be

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1 preferential, prejudicial, discriminatory, or
2 anticompetitive.

3 (9) "Telecommunications utility" or "utility" means any
4 person, corporation, river authority, cooperative
5 corporation, or any combination thereof, other than
6 a municipal corporation, or their lessees,
7 trustees, and receivers, now or hereafter owning or
8 operating for compensation in this state equipment
9 or facilities for the conveyance, transmission, or
10 reception of communications over a telephone system
11 as a dominant carrier (hereinafter
12 "telecommunications utility"). A person or
13 corporation not otherwise a public utility within
14 the meaning of this Act may not be deemed such
15 solely because of the furnishing or furnishing and
16 maintenance of a private system or the manufacture,
17 distribution, installation, or maintenance of
18 customer premise communications equipment and
19 accessories. Except as provided by Sections 3.606
20 and 3.608 of this Act, nothing in this Act shall be
21 construed to apply to companies whose only form of
22 business is being telecommunications managers,
23 companies that administer central office based or
24 customer based PBX-type sharing/resale arrangements
25 as their only form of business, telegraph services,

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1 television stations, radio stations, community
2 antenna television services, radio-telephone
3 services that may be authorized under the Public
4 Mobile Radio Services rules of the Federal
5 Communications Commission, or commercial mobile
6 service providers, under Sections 153(n) and
7 332(d), Communications Act of 1934 (47 U. S. C.
8 Section 151 et seq.), Federal Communications
9 Commission rules, and the Omnibus Budget
10 Reconciliation Act of 1993, other than such radio-
11 telephone services provided by wire line telephone
12 companies under the Domestic Public Land Mobile
13 Radio Service and Rural Radio Service rules of the
14 Federal Communications Commission. Interexchange
15 telecommunications carriers
16 (including resellers of interexchange
17 telecommunications services), specialized
18 communications common carriers, competitive, non-
19 incumbent, local exchange and access providers,
20 other resellers of communications, other
21 communications carriers who convey, transmit, or
22 receive communications in whole or in part over a
23 telephone system, providers of operator services as
24 defined in Section 3.052 (a) of this Act (except
25 that subscribers to customer-owned pay telephone

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1 service may not be deemed to be telecommunications
2 utilities), and separated affiliate and electronic
3 publishing joint ventures as defined by Subtitle L
4 of this title are also telecommunications
5 utilities, but the commission's regulatory
6 authority as to them is only as hereinafter
7 defined. The term "public utility" or "utility"
8 does not include any person or corporation not
9 otherwise a public utility that furnishes the
10 services or commodities described in this section
11 only to itself, its employees, or its tenants as an
12 incident of such employee service or tenancy, when
13 such service or commodity is not resold to or used
14 by others.

15 (10) "Telecommunications provider" means a certificated
16 telecommunications utility, a shared tenant service
17 provider, a nondominant carrier of
18 telecommunications services, provider of radio-
19 telephone service authorized under the Commercial
20 Mobile Service under Sections 153(n) and 332(d),
21 Communications Act of 1934 (47 U.S.C. Section 151
22 et seq.), Federal Communications Commission rules,
23 and the Omnibus Budget Reconciliation Act of 1993,
24 a telecommunications entity that provides central
25 office based PBX-type sharing or resale

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1 arrangements, an interexchange telecommunications
2 carrier, a specialized common carrier, competitive,
3 non-incumbent local exchange and access providers,
4 a reseller of

5 communications, a provider of operator services, a
6 provider of customer-owned pay telephone service,
7 and other persons or entities that the commission
8 may from time to time find provide
9 telecommunications services to customers in this
10 state. The term does not include a provider of
11 enhanced or information services, or another use of
12 telecommunications services, who does not also
13 provide telecommunications services or any state
14 agency, or state institution of higher education,
15 or any service provided by any state agency or
16 state institution of higher education.

17 (11) "Tier 1 local exchange company" means a Tier 1
18 local exchange company as defined by the Federal
19 Communications Commission.

20 (12) This Act also adopts those definitions contained in
21 the federal Telecommunications Act of 1996 as may
22 be applicable to the telecommunications industry in
23 New Mexico or the implementation of the purposes or
24 provisions of this Act.

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1 SUBTITLE B. JURISDICTION OF COMMISSION

2 Sec. 3.051. TELECOMMUNICATIONS UTILITIES; FOSTERING
3 COMPETITION.

4 (a) Subject to the limitations imposed in this Act, and
5 for the purpose of carrying out the Legislature's
6 public policy of fostering competition, in Sec.
7 3.001 of this Act and of regulating rates,
8 operations, and services of dominant
9 telecommunications, utilities, so that such rates
10 may be just, fair, and reasonable, and the services
11 adequate and efficient, the commission shall have
12 exclusive original jurisdiction over the business
13 and property of all telecommunications utilities in
14 this state until a competitive market environment
15 exists as to one or more services which then
16 shall be deregulated. In the exercise of its
17 jurisdiction to regulate the rates, operations, and
18 services of a telecommunications utility providing
19 service in a municipality on the state line
20 adjacent to a municipality in an adjoining state,
21 the commission may cooperate with the utility
22 regulatory commission of the adjoining state or the
23 federal government and may hold joint hearings and
24 make joint investigations with any of those
25 commissions.

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(b) The commission shall carry out its duties compatible with and otherwise cooperate with federal bodies as required by law, including the Telecommunications Act of 1996.

(c) Except as provided by Subsections (m) and (n) of this section and Section 3.052 of this Act, the commission shall only have the following jurisdiction overall telecommunications utilities who are not dominant carriers:

(1) to require registration as provided in Subsection (e) of this section;

(2) to conduct such investigations as are necessary to determine the existence, impact, and scope of competition in the telecommunications industry, including identifying dominant carriers in the local telecommunications and intraLATA interexchange telecommunications industry and defining the telecommunications market or markets, and in connection therewith may call and hold hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents and make findings of fact and decisions with respect to administering

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- the provisions of this Act or the rules,
orders, and other actions of the commission;
- (3) to require the filing of such reports as the
commission may direct from time
to time, provided such reports do not pose a
burden on, cause commercial harm to or place
the non-dominant carriers in a competitive
disadvantage.
- (4) to require that every local exchange area have
local, exchange access and interexchange
telecommunications services, except that a
telecommunications utility must be allowed to
discontinue service to a local exchange area
if comparable service is available in the area
and the discontinuance is not contrary to the
public interest, this section does not
authorize the commission to require a
telecommunications utility that has not
provided services to a local exchange area
during the previous 12 months and that has
never provided services to that same local
exchange area for a cumulative period of one
year at any time in the past to initiate
services to that local exchange area; and

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1 (5) to require the quality of telecommunications
2 service provided in each exchange to be
3 adequate to protect the interests of customers
4 of that exchange if the commission determines
5 that service to a local exchange has
6 deteriorated to the point that service is not
7 reliable.

8 (d) All providers of communications service described
9 in Subsection (c) of this section who commence such
10 service to the public shall register with the
11 commission within 30 days of commencing service.
12 Such registration shall be accomplished by filing
13 with the commission a description of the location
14 and type of service provided, the price to the
15 public of such service, and such other registration
16 information as the commission may direct.

17 Notwithstanding any other provision of this Act, an
18 interexchange telecommunications utility doing
19 business in this state shall continue
20 to maintain on file with the commission tariffs or
21 lists governing the terms of providing its
22 services.

23 (e) (1) For the purpose of carrying out the public
24 policy stated in Sec. 3.001 of this Act and
25 any other section of this Act notwithstanding,

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1 the commission is granted authority under this
2 Act, after a public evidentiary hearing, to
3 promulgate rules and establish procedures
4 applicable to incumbent local exchange
5 carriers for establish and foster competition
6 in telecommunications markets and submarkets
7 and to allow incumbent local exchange carriers
8 to respond to significant competitive
9 challenges. Nothing in this section is
10 intended to change the burden or proof of the
11 incumbent local exchange company under
12 Sections 3.202, 3.203, 3.204, 3.205, 3.206,
13 3.207, and 3.208 of this Act. Nothing in this
14 section is to be construed in conflict with
15 the Telecommunications Act of 1996 and
16 decisions of federal bodies thereunder.

- 17 (2) The regulatory treatments which the commission
18 may implement shall be compatible with the
19 Telecommunications Act of 1996 and, subject
20 thereto, may include but are not limited to:
- 21 (A) approval of price or rate ceilings or a
22 range of rates for one or more services;
 - 23 (B) approval of customer-specific contracts
24 for a specific service; provided,
25 however, that the commission shall

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approve a contract to provide central office based PBX-type services for systems of 200 stations or more, billing and collection services, high-speed private

line services of 1.544 megabits or greater, and customized services, provided that the contract is filed at least 30 days before initiation of the service contracted for; that the contract is accompanied with an affidavit from the person or entity contracting for the telecommunications service stating that he considered the acquisition of the same, equivalent, or substitutable services by bid or quotation from a source other than the incumbent local exchange carrier that the incumbent local exchange carrier is recovering the costs of providing the services; and that approval of the contract is in the public interest; the contract shall be approved or denied within 30 days after filing, unless the commission for good cause extends the

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- 1 effective date for an additional 35
2 days; and
3 (C) the detariffing of rates.
4 (D) Physical or virtual interconnection
5 consistent with the Telecommunications
6 Act of 1996;
7 (E) approval of the resale of local exchange
8 facilities and service and the
9 unbundling of same, consistent with the
10 Telecommunications Act of 1996.
11 (f) In order to encourage the rapid introduction of new
12 or experimental services or promotional rates, the
13 commission shall promulgate rules and establish
14 procedures which allow the expedited introduction
15 of, the establishment and adjustment of rates for,
16 and the withdrawal of such services, including
17 requests for such services made to the commission
18 by the governing body of a municipality served by
19 an
20 incumbent local exchange company having more than
21 200,000 access lines throughout the state.
22 (g) In promulgating new rules and establishing the
23 procedures contemplated in Subsections (e) and (f)
24 of this section, the commission shall seek to
25 balance the public interest in a technologically

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1 advanced telecommunications system providing a wide
2 range of new and innovative services with
3 preserving universal service prohibiting
4 anticompetitive practices, and preventing the
5 subsidization of competitive services with revenues
6 from regulated monopoly services and not in
7 conflict with Sections 3, 102, 251-261 and 271-276
8 of the Telecommunications Act of 1996 and federal
9 agency and court decisions thereon. The commission
10 shall promulgate these rules and establish these
11 procedures so as to incorporate an appropriate mix
12 of regulatory and market mechanisms reflecting the
13 level and nature of competition in the marketplace.
14 Rates established under Subsections (d) and (e) of
15 this section may not be:

- 16 (1) unreasonably preferential, prejudicial, or
17 discriminatory;
 - 18 (2) subsidized either directly or indirectly by
19 regulated monopoly services; or
 - 20 (3) predatory or anticompetitive.
- 21 (h) The commission promptly shall initiate a rulemaking
22 proceeding and take public comment and promulgate
23 rules which prescribe the standards necessary to
24 ensure that all rates set under the provisions of
25 this section cover their appropriate costs,

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1 compatible with Sec. 3.002 (2).

2 (i) The commission is granted all necessary power and
3 authority to prescribe and collect fees and
4 assessments from local exchange companies necessary
5 to recover the commission's and the office's costs
6 of activities carried out and services provided
7 under this subsection and subsections (e) (f) (g)
8 (I) and (j) of this section.

9 (j) Subsections (e) and (f) of this section are not
10 applicable to basic local telecommunications
11 service, including local measured service.
12 Paragraph (B) of Subdivision (3) of Subsection (e)
13 of this section is not applicable to message
14 telecommunications services, switched access
15 services for interexchange carriers, or wide area
16 telecommunications service. An incumbent local
17 exchange company may not price similar services
18 provided pursuant to contracts under Paragraph (B)
19 of Subdivision (3) of Subsection (e) of this section
20 in a discriminatory manner, For purposes of this
21 section, similar services shall be defined as those
22 services which are provided at or near the same
23 point in time, which have the same characteristics,
24 and which are provided under the same or similar
25 circumstances.

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1 (k) Before January 15 of each odd-numbered year, the
2 commission shall report to the legislature on the
3 scope of competition in regulated
4 telecommunications markets
5 and the impact of competition on customers in both
6 competitive and noncompetitive markets, with a
7 specific focus on rural markets. The report shall
8 include an assessment of the impact of competition
9 on the rates and availability of telecommunications
10 services for residential and business customers and
11 shall specifically address any effects on universal
12 service. The report shall provide a summary of
13 commission actions over the preceding two years
14 which reflect the commission's efforts to enlarge
15 the scope of competition in regulated
16 telecommunications markets. The report shall also
17 include recommendations to the legislature for
18 further legislation which the commission finds
19 appropriate to promote the public interest in the
20 context of a partially competitive
21 telecommunications market.

22 (l) The commission may enter such orders as may be
23 necessary to protect the public interest and the
24 competitive marketplace, if the commission upon
25 complaint from another telecommunications utility

1 finds by a preponderance of the evidence upon
2 notice and evidentiary hearing that a
3 telecommunications utility attempted to engage or
4 has engaged in predatory pricing or other
5 anticompetitive conduct.

6 (m) In any proceeding before the commission alleging
7 conduct or activities by a telecommunications
8 utility against another telecommunications utility
9 in contravention of Subsections (l) and (n) of this
10 section, the burden of proof shall be upon the
11 complaining telecommunications utility; however, in
12 such proceedings brought by customers or their
13 representatives who are not themselves
14 interexchange telecommunications utilities or in
15 such proceedings initiated by the commission, the
16 burden of proof shall be upon the respondent
17 telecommunications
18 utility. However, if the commission finds it to
19 be in the public interest, the commission may
20 impose the burden of proof in such proceedings on
21 the complaining party.

22 (n) The commission shall have the authority to require
23 that a service provided by an interexchange
24 telecommunications utility be made available in an
25 exchange served by the utility within a reasonable

1 time after receipt of a bona fide request for such
2 service in that exchange, subject to the ability of
3 the local exchange company to provide the required
4 access or other service. A utility may not be
5 required to extend a service to an area if
6 provisions of that service would impose, after
7 consideration of the public interest to be served,
8 unreasonable costs upon or require unreasonable
9 investments by the interexchange telecommunications
10 utility. The commission may require such
11 information from interexchange utilities and local
12 exchange companies as may be necessary to enforce
13 this provision.

- 14 (o) The commission may exempt from any requirement of
15 this section an interexchange telecommunications
16 utility that the commission determines does not
17 have a significant effect on the public interest,
18 and it may exempt any interexchange
19 telecommunications utility which solely relies on
20 the facilities of others to complete long distance
21 calls if the commission deems this action to be in
22 the public interest. Information which may be
23 provided to the commission by these non-dominant
24 telecommunications facilities shall be treated in a
25 confidential manner.

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- 1 (p) Requirements imposed by Subsections (b), (c) and
2 (j) of this section on an interexchange
3 telecommunications utility shall apply to
4 nondominant carriers and
5 shall constitute the minimum requirements to be
6 imposed by the commission for any dominant carrier.
- 7 (q) The commission may, only as necessary to enforce
8 its limited jurisdiction, prescribe forms of books,
9 accounts, records, and memoranda to be kept by a
10 company that has a certificate of operating
11 authority or service provider certificate of
12 operating authority under Subtitle F of this title
13 that in the judgment of the commission may be
14 necessary to carry out the limited jurisdiction
15 over those companies that this Act provides to the
16 commission.
- 17
- 18 (r) (1) Except as otherwise specifically provided by
19 this Act, the commission shall have only the
20 following authority over a holder of a
21 certificate of operating authority or service
22 provider certificate of operating authority:
23 (A) to enforce the applicable provisions of
24 this Act under the policies stated in
25 Subtitle A, Title I, of this Act; and

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Sec. 3.001 of Title II of this Act.

(B) to assert jurisdiction over a specific service in accordance with Section 3.2572 of this Act;

(C) to require co-carriage reciprocity; and

(D) to regulate condemnation and building access.

(2) The commission may not impose on a telecommunications utility that has a certificate of operating authority or service provider that has a certificate of operating authority a rule or regulatory practice under this section that imposes a greater regulatory burden on that telecommunications utility than is imposed on a certificate of convenience and necessity holder serving the same area or that imposes a greater burden on that telecommunications utility than required by the Telecommunications Act of 1996.

Sec. 3.052. OPERATOR SERVICE; REGULATION AND DISCLOSURE OF INFORMATION.

(a) In this section "operator service" means any service using live operator or automated operator functions for the handling of telephone service such as toll calling via collect, third-number

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1 billing, and calling card services. Calls for
2 which

3
4 the called party has arranged to be billed (800
5 service) are not considered operator services.

6 (b) Prior to the connection of each call the operator
7 service provider shall:

8 (1) announce the provider's name; and

9 (2) quote, at the caller's request, the rate and
10 any other fees or surcharges applicable to the
11 call and charged by the provider.

12 (c) An operator service provider shall furnish each
13 entity with which it contracts to provide operator
14 service a sticker, card, or other form of
15 information approved by the commission for each
16 telephone that has access to the service and is
17 intended to be utilized by the public, unless the
18 owner of the telephone has received approval from
19 the commission for an alternative form of
20 information. The information must state the
21 provider's name that the operator service provider
22 will provide rate information on the caller's
23 request, that the caller will be informed how to
24 access the local exchange company operator on
25 request, and that any complaint about the service

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1 may be made to the provider or the commission at
2 the designated telephone number. The operator
3 service provider shall require by contract that the
4 entity

5 receiving the information display it on or near
6 each of the telephones that has access to the
7 service and is intended for use by the public.

8 (d) An operator service provider must, on request,
9 inform the caller how to access the operator for
10 the local exchange company serving the exchange
11 from which the call is made. A charge may not be
12 made for this information.

13 (e) The commission shall adopt rules requiring an
14 operator service provider to include in its
15 contract with each entity through which it provides
16 operator service a requirement that the telephones
17 subscribed to its services shall allow access to
18 the local exchange carrier operator serving the
19 exchange from which the call is made and to other
20 telecommunications utilities; but in order to
21 prevent fraudulent use of its services, an operator
22 service provider and individual entities through
23 which it provides operator services may block
24 access if either obtains a waiver for this purpose
25 from the commission or the Federal Communications

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1 Commission. The procedure and criteria for
2 obtaining a waiver from the commission shall be set
3 forth in the commission's rules.

4 (f) The commission shall promulgate rules consistent
5 with the requirements of this section and any
6 additional requirements deemed necessary to protect
7 the public interest by September 1, 1999. All
8 rules promulgated under this section shall be
9 nondiscriminatory and designed to promote
10 competition that facilitates consumer choice.

11 (g) The commission may investigate a complaint that it
12 receives concerning operator services. If the
13 commission determines that an operator service
14 provider has violated or is about to violate this
15 section, the commission may, upon proper
16 notice and evidentiary hearing, take action to
17 stop, correct, or prevent the violation.

18 (h) Except as provided by Subsection (I) of this
19 section, this section applies only to a
20 telecommunications utility that is not a dominant
21 carrier. The commission is granted all necessary
22 power and authority under this Act to promulgate
23 rules and establish procedures for the purposes of
24 enforcing and implementing this section.
25

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1 (i) Each dominant or nondominant telecommunications
2 utility that provides operator service shall ensure
3 that a caller may access a live operator at the
4 beginning of all live or mechanized operator
5 assisted calls through a method designed to be
6 easily and clearly understandable and accessible to
7 the caller. A telecommunications utility shall
8 submit to the commission the method by which the
9 utility will provide access to a live operator for
10 review. This subsection applies regardless of the
11 method by which the telecommunications utility
12 provides the operator service. The requirements of
13 this subsection do not apply to telephones located
14 in prison or jail facilities.

15 Sec. 3.053. SALE OF PROPERTY.

16 (a) The commission shall complete an investigation
17 under Section 1.251 of this Act that relates to a
18 public utility and enter a final order within 180
19 days after the date of notification by the utility.
20 If an order is not entered, the utility's action is
21 considered consistent with the public interest.

22 (b) Section 1.251 of this Act does not apply to an
23 incumbent local exchange company electing under
24 Subtitle H of this title or to a company that
25 receives a certificate of

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1 operating authority or a service provider
2 certificate of operating authority under Subtitle F
3 of this title.

4
5 SUBTITLE C. RATES AND SERVICES

6 Sec. 3.151. RATES; METHODS AND ACCOUNTS.

7 (a) To the extent rates and costs of telecommunications
8 utilities are not determined by the
9 Telecommunications Act of 1996, and compatible with
10 that Act, the commission shall fix proper and
11 adequate rates and methods of depreciation,
12 amortization, or depletion of the several classes
13 of property of each public utility and shall
14 require every public utility to carry a proper and
15 adequate depreciation account in accordance with
16 such rates and methods and which such other rules
17 and regulations as the commission prescribes. On
18 application of a utility, the commission shall fix
19 depreciation rates that promote deployment of new
20 technology and infrastructure. In setting those
21 rates, the commission shall consider depreciation
22 practices of nonregulated telecommunications
23 providers. Such rates, methods, and accounts shall
24 be utilized uniformly and consistently throughout
25 the ratesetting and appeal proceedings. A company

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1 electing under Subtitle H of this title may
2 determine its own depreciation rates and
3 amortizations, but shall notify the commission of
4 any changes.

5 (b) Every public utility shall keep separate accounts
6 to show all profits or losses resulting from the
7 sale or lease of appliances, fixtures, equipment,
8 or other merchandise. This profit or loss may not
9 be taken into consideration by the commission in
10 arriving at any rate to be charged for service by
11 any such public
12 utility, to the extent that such merchandise is not
13 integral to the provision of utility service.

14 (c) Copy from parallel electric Title II provision

15 (d) In determining the allocation of tax savings
16 derived from application of such methods as
17 liberalized depreciation and amortization and the
18 investment tax credit, the commission shall
19 equitably balance the interests of present and
20 future customers and shall apportion such benefits
21 between consumers and the utilities accordingly.
22 Where any portion of the investment tax credit has
23 been retained by a public utility, that same amount
24 shall be deducted from the original cost of the
25 facilities or other addition to the rate base to

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1 which the credit applied, to the extent allowed by
2 the Internal Revenue Code.

3 Sec. 3.152. **REPORTING OF ADVERTISING OR PUBLIC RELATIONS**
4 **EXPENSES.**

5 (a) The commission may require an annual reporting from
6 each utility company of all its expenditures for
7 business gifts and entertainment and for
8 institutional, consumption-inducing, and other
9 advertising or public relations expenses.

10 (b) The commission may not allow as costs or expenses
11 for ratemaking purposes any of these expenditures
12 which the commission determines not to be in the
13 public interest.

14 (c) The cost of legislative advocacy expenses may not
15 in any case be allowed as costs or expenses for
16 ratemaking purposes.

17 (d) Reasonable charitable or civic contributions may be
18 allowed not to exceed the amount approved by the
19 commission.

20 Sec. 3.153. **UNLAWFUL RATES, RULES, AND REGULATIONS.** It shall
21 be unlawful for any utility to charge, collect, or receive
22 any rate for utility service or to
23 impose any rule or regulation other than
24 as herein provided.

25 Sec. 3.154. **FILING SCHEDULE OF RATES, RULES, AND REGULATIONS.**

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1 (a) Every public utility shall file with the commission
2 schedules showing all rates which are subject to
3 the jurisdiction of the commission and which are in
4 force at the time for any utility service, product,
5 or commodity offered by the utility.

6 (b) Every public utility shall file with and as a part
7 of such schedules all rules and regulations
8 relating to or affecting the rates, utility
9 service, product, or commodity furnished by such
10 utility.

11 Sec. 3. 1545. RECORDS. Notwithstanding Section 1.204 of this
12 Act, books, accounts, records, or memoranda of a public
13 utility may be removed from
14 the state so long as those
15 books, accounts, records, or
16 memoranda are returned to the
17 state for any inspection by
18 the commission that is
19 authorized by this Act.

20 Sec. 3. 155. STANDARDS OF SERVICE.

21 (a) Every public utility shall furnish such service,
22 instrumentalities, and facilities as shall be safe,
23 adequate, efficient, and reasonable.

24 (b) The commission after reasonable notice and hearing
25 had on its own motion or on complaint may:

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- 1 (1) ascertain and fix just and reasonable
2 standards, classifications, regulations, or
3 practices to be observed and followed by any
4 or all utilities with respect to the service
5 to be furnished;
- 6 (2) ascertain and fix adequate and reasonable
7 standards for the measurement of the quantity,
8 quality, or other condition pertaining to the
9 supply of the service;
- 10 (3) prescribe reasonable regulations for the
11 examination and testing of the service and for
12 the measurement thereof; and
- 13 (4) establish or approve reasonable rules,
14 regulations, specifications, and standards to
15 secure the accuracy of all meters,
16 instruments, and equipment used for the
17 measurement of any service of any public
18 utility.

19
20 (c) Any standards, classifications, regulations, or
21 practices now or hereafter observed or followed by
22 any public utility may be filed by it with the
23 commission, and the same shall continue in force
24 until amended by the public utility or until
25 changed by the commission as herein provided.

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Sec. 3.1555. MINIMUM SERVICES.

- (a) Except as provided by Subsection (d) of this section, the commission shall require each holder of a certificate of convenience and necessity or certificate of operating authority in this state to provide at the applicable tariff rate, if any, to all customers, irrespective of race, national origin, income, or residence in an urban or rural area, not later than December 31, 2000:
 - (1) single party service;
 - (2) tone-dialing service;
 - (3) basic custom calling features;
 - (4) equal access for interLATA interexchange carriers on a bona fide request; and
 - (5) digital switching capability in all exchanges on customer request, provided by a digital switch in the exchange or by connection to a digital switch in another exchange.

- (b) Notwithstanding Subsection (a) of this section an electing incumbent local exchange company serving as of January 1, 1998, more than 175,000 but fewer than 1,500,000 access lines shall install digital switches in its central offices serving exchanges of less than 20,000 access lines before December 31, 2000.

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1 (c) The commission may temporarily waive these
2 requirements on a showing of good cause. The
3 commission may not consider the cost of
4 implementing this section in determining whether an
5 electing company is entitled to a rate increase
6 under Subtitle H or I of this title or increased
7 universal service funds under Section 3.608 of this
8 Act.

9 (d) Not later than July 1, 2000 each local exchange
10 carrier shall make ISDN available to all customers
11 in exchange areas of the company that have at least
12 20,000 access lines.

13 Sec. 3.1556. RECONNECTION FEE. The commission shall
14 establish a reasonable limit on the amount that a local
15 exchange carrier may
16 charge a customer for
17 changing the location at
18 which the customer
19 receives service.

21 SUBTITLE D. PROCEEDINGS BEFORE THE COMMISSION

22 Sec. 3.201. POWER TO INSURE COMPLIANCE; RATE REGULATION.
23 Subject to the provisions of this Act, the commission is
24 hereby vested with all authority and power of
25 the State to insure compliance with the

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1 obligations of public utilities in this Act.
2 Except as otherwise provided by this Act, the
3 commission is empowered to fix and regulate
4 rates of

5 public utilities, including rules and regulations for
6 determining the classification of customers and services
7 and for determining the applicability of rates. A rule
8 or order of the commission may not conflict with the
9 rulings of any federal regulatory body.

10 Sec. 3.202. JUST AND REASONABLE RATES. It shall be the duty
11 of the commission to insure that every rate made,
12 demanded, or received by any public
13 utility or by any two or more
14 utilities jointly shall be just and
15 reasonable. Rates may not be
16 preferential, prejudicial, or
17 discriminatory, but shall be
18 sufficient, equitable and
19 consistent in application to each
20 class of consumers. For ratemaking
21 purposes, the commission may treat
22 two or more municipalities served
23 by a public utility as a single
24 class wherever it deems such
25 treatment to be appropriate.

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Approval by the commission of a reduced rate for service for a class of consumers eligible under Section 3.602 of this Act for tele-assistance service does not constitute a violation of this section.

Sec. 3.203. **FIXING OVERALL REVENUES.**

- (a) In fixing the rates of a public utility the commission shall, in a manner not inconsistent with the Telecommunications Act of 1996, fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses.
- (b) In fixing a reasonable return on invested capital, the commission shall consider, in addition to other applicable factors, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management.

Sec. 3.204. **BURDEN OF PROOF.** Except as hereafter provided, in any proceeding involving any proposed change of rates, the burden of proof to show

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1 that the proposed change, if proposed by the utility, or
2 that the existing rate, if it is proposed to reduce the
3 rate, is just and reasonable shall be on the public
4 utility. In any proceeding involving an incumbent local
5 exchange company in which the incumbent local exchange
6 company's rate or rates are in issue, the burden of proof
7 that such rate or rates are just and reasonable shall be
8 on the incumbent local exchange company.

9
10 Sec. 3.205. COMPONENTS OF INVESTED CAPITAL AND NET INCOME.

11 The

12 components of invested capital and net income shall be
13 determined according to Section 3.206, 3.207, and 3.208.

14 Sec. 3.206. INVESTED CAPITAL.

15 (a) Utility rates shall be based upon the original cost
16 of property used by and useful to the public
17 utility in providing service including construction
18 work in progress at cost as recorded on the books
19 of the utility.

20 (b) The inclusion of construction work in progress is
21 an exceptional form of rate relief to be granted
22 only upon the demonstration by the utility that
23 such inclusion is necessary to the financial
24 integrity of the utility. Construction work in
25 progress may not be included in the rate base for

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1 major projects under construction to the extent
2 that such projects have been inefficiently or
3 imprudently planned or managed.

4 (c) Original cost shall be the actual money cost or the
5 actual money value of any consideration paid other
6 than money of the property at the time it shall
7 have been dedicated to public use, whether by the
8 utility which is the present owner or by a
9 predecessor, less depreciation. The determination
10 of cost shall be made on a cost
11 methodology which is consistent with the cost
12 methodology adopted under the federal
13 Telecommunications Act of 1996 and Sec. 3.208 of
14 this Act.

15 Sec. 3.207. SEPARATIONS AND ALLOCATIONS. Costs of
16 facilities, revenues, expenses,

17 taxes and reserves shall be separated or allocated as
18 prescribed by the commission, consistent with federal
19 law. No separations or allocations shall result in
20 artificial subsidies by jurisdiction or by costs,
21 revenues, expenses, taxes or reserves.

22 Sec. 3.208. NET INCOME.

23 (a) "Net income" means the total revenues of the public
24 utility less all reasonable and necessary expenses
25 as determined by the commission under the Act. The

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1 commission shall determine expenses and revenues in
2 a manner consistent with this Act and this section.

3 (b) Transactions with Affiliated Interests. Payment to
4 affiliated interests or any existing or former unit
5 of the Bell System (e.g., Bellcore) for costs of
6 any services or any property, right, or thing or
7 for interest expense may not be allowed either as
8 capital cost or as expense except to the extent
9 that the commission shall find such payment to be
10 reasonable and necessary for each item or class of
11 items as determined by the commission. Any such
12 finding shall include specific findings of the
13 reasonableness and necessity of each item or class
14 of items allowed and a finding that the price to
15 the utility is no higher than prices charged by the
16 supplying affiliate to its other affiliates or
17 divisions for the same item or class of items, or
18 to unaffiliated persons or corporations within the
19 same market areas or having the same market
20 conditions. If the supplying affiliate has
21 calculated its charges to the utility in a manner
22 consistent with the rules of the Federal
23 Communications

24 Commission, no finding shall be required as to the
25 price charged by the supplying affiliate to its

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1 other affiliates or divisions. In any case in
2 which the commission finds that the test period
3 affiliate expense is unreasonable, the commission
4 shall determine the reasonable level of the expense
5 and shall include such expense in determining the
6 utility's cost of service.

7
8 (c) Income Taxes. If the public utility is a member of
9 an affiliated group that is eligible to file a
10 consolidated income tax return and if it is
11 advantageous to the public utility to do so, income
12 taxes shall be computed as though a consolidated
13 return had been so filed and the utility had
14 realized its fair share of the savings resulting
15 from the consolidated return, unless it is shown to
16 the satisfaction of the commission that it was
17 reasonable to choose not to consolidate returns.
18 The amounts of income taxes saved by a consolidated
19 group of which a public utility is a member by
20 reason of the elimination of the consolidated return
21 of the intercompany profit on purchases by the
22 public utility from an affiliate and shall be
23 applied to reduce the cost of the property or
24 services so purchased. The investment tax credit
25 allowed against federal income taxes, to the extent

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1 retained by the utility, shall be applied as a
2 reduction in the rate-based contribution of the
3 assets to which such credit applies, to the extent
4 and at such rate as allowed by the Internal Revenue
5 Code.

6 (d) Expenses Disallowed. The commission may not
7 consider for ratemaking purposes the following
8 expenses:

9 (1) legislative or regulatory lobbying expenses,
10 whether made directly or indirectly, including
11 but not limited to lobbying expenses included
12 in trade association dues;

13 (2) costs of processing a refund or credit under
14 Subsection (e) of Section 3.211 of this Act;
15 or

16 (3) any expenditure found by the commission to be
17 unreasonable, unnecessary, or not in the
18 public interest, including but not limited to
19 executive salaries, advertising expenses,
20 legal expenses, and court or agency - ordered
21 damages, penalties or fines.

22 (e) Rules. The commission may promulgate reasonable
23 rules and regulations with respect to the allowance
24 or disallowance of any expenses for ratemaking
25 purposes.

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1 (f) Costs for the purposes of setting rates under this
2 Title shall not be utilized in the calculation of
3 costs and prices required for the development of
4 competitive markets through resale, number
5 portability, dialing parity, access to rights-of-
6 way, interconnection; unbundled access, resale,
7 collocation or other steps required by this Act or
8 the Telecommunications Act of 1996.

9 Sec. 3.209. SELF-INSURANCE

10 (a) A public utility may self-insure all or a portion
11 of its potential liability or catastrophic property
12 loss, including windstorm, fire, and explosion
13 losses, which could not have been reasonably
14 anticipated and included under operating and
15 maintenance expenses. The commission shall approve
16 a self-insurance plan under this section if it
17 finds that the coverage is in the public interest
18 and the plan is a

19 lower cost alternative to purchasing commercial
20 insurance, considering all costs, and that
21 ratepayers will receive the benefits of that
22 saving.

23 (b) In computing a utility's reasonable and necessary
24 expenses under Section 3.208 of this Act, the
25 commission shall allow as a necessary expense the

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1 funds credited to reserve accounts for the self-
2 insurance, to the extent the commission finds it in
3 the public interest. After the reserve account is
4 established, the commission shall consider if the
5 reserve account has a surplus or shortage in
6 determining the utility's rate base.

7 A surplus in the reserve account will exist if the
8 charges against the reserve account are less than
9 the funds credited to the reserve. A shortage in
10 the reserve account will exist if the charges
11 against the account are greater than the funds
12 credited to the reserve. The commission shall
13 subtract any surplus from and add any shortage to
14 the rate base.

15 (c) The commission shall determine reasonableness under
16 Subsection (b) of this section from information
17 provided at the time the self-insurance plan and
18 reserve account are established and upon the filing
19 of each rate case by a utility that has such a
20 fund.

21 (d) The commission shall adopt rules governing self-
22 insurance under this section.

23 Sec. 3.210. UNREASONABLE OR VIOLATIVE EXISTING RATES;
24 INVESTIGATING
25 COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE.

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1 (a) Whenever the commission, after reasonable notice
2 and hearing, on its own motion or on complaint by
3 any affected person, finds that the existing rates
4 of any public utility for any service are
5 unreasonable, anticompetitive or in any way in
6 violation

7 of any provision of federal or state law, the
8 commission shall determine the just and reasonable
9 rates, including maximum or minimum rates, to be
10 thereafter observed and in force and shall fix the
11 same by order to be served on the public utility;
12 and such rates shall constitute the legal rates of
13 the public utility until changed as provided in
14 this Act.

15 (b) Whenever a public utility does not itself produce
16 or generate that which it distributes, transmits,
17 or furnishes to the public for compensation but
18 obtains the same from another source, the
19 commission shall have the power and authority to
20 investigate the cost of such production or
21 generation in any investigation of the
22 reasonableness of the rates of such public utility.

23 (c) Except as provided in Subtitles H and I of this
24 title, this section does not apply to a company
25 electing into Subtitle H or I of this title.

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1 However, the commission shall retain jurisdiction
2 to hear and resolve complaints regarding an
3 electing company's compliance with obligations
4 imposed by this Act.

5 Sec. 3.211. STATEMENT OF INTENT TO CHANGE RATES; MAJOR
6 CHANGES;

7 HEARING; SUSPENSION OF RATE SCHEDULE; DETERMINATION OF
8 RATE LEVEL.

9 (a) A utility may not make changes in its rates except
10 by filing a statement of intent with the commission
11 at least 35 days prior to the effective date of the
12 proposed change.

13 The statement of intent shall include proposed
14 revisions of tariffs and schedules and a statement
15 specifying in detail each proposed change, the
16 effect the proposed change is expected to have on
17 the revenues of the company, the classes and
18 numbers of utility consumers affected, and such
19 other information as may be required by the
20 commission's rules and regulations. The statement
21 of intent shall expressly represent that it does
22 not conflict with provisions of this Act or federal
23 law, including the Telecommunications Act of 1996.
24 A copy of the statement of intent shall be mailed
25 or delivered to the appropriate officer of each

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1 affected municipality, and notice shall be given by
2 publication in conspicuous form, and place of a
3 notice to the public of such proposed change once
4 in each week for four successive weeks prior to the
5 effective date of the proposed change in a
6 newspaper having general circulation in each county
7 containing territory affected by the proposed
8 change, and by mail to such other affected persons
9 as may be required by the commission's rules and
10 regulations. The commission may waive the
11 publication of notice requirement prescribed by
12 this subsection in a proceeding that involves a
13 rate reduction for all affected ratepayers only.
14 The applicant shall give notice of the proposed
15 rate change by mail to all affected utility
16 customers. The commission by rule shall also
17 define other proceedings for which the publication
18 of notice requirement prescribed by this subsection
19 may be waived on a showing of good cause, provided
20 that a waiver may not be granted in any proceeding
21 involving a rate increase to any class or category
22 of ratepayer.

23 (b) The commission, for good cause shown, may, except
24 in the case of major changes, allow changes in rate
25 to take effect prior to the end of such 35-day

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1 period under such conditions as it may prescribe,
2 subject to suspension as provided herein. All such
3 changes shall be indicated immediately upon its
4 schedules by such utility. "Major changes" shall
5 mean an increase in rates which would increase the
6 aggregate revenues of the applicant more than the
7 greater of \$100,000 or 2-1/2 percent, but does not
8 include changes in rates allowed to go into effect
9 by the commission or made by the utility pursuant
10 to an order of the commission after hearings held
11 upon notice to the public.

12 (c) Whenever there is filed with the commission any
13 schedule modifying or resulting in a change in any
14 rates then in force, the commission shall on
15 complaint by any affected person or may on its own
16 motion, at any time within 30 days from the date
17 when such change would or has become effective,
18 and, if it so orders, without answer or other
19 formal pleading by the utility, but on reasonable
20 notice, including notice to the governing bodies of
21 all affected municipalities and counties, enter on
22 a hearing to determine the propriety of such
23 change.

24 The commission shall hold such a hearing in every
25 case in which the change constitutes a major change

1 in rates, provided that an informal proceeding may
2 satisfy this requirement if a complaint has not
3 been received before the expiration of 45 days
4 after notice of the change shall have been filed.
5 In each case where the commission determines it is
6 in the public interest to collect testimony at a
7 regional hearing for the inclusion in the record,
8 the commission shall hold a regional hearing at an
9 appropriate location. A regional hearing is not
10 required in a case involving a member-owned
11 utility, unless the commission determines
12 otherwise.

- 13 (d) Pending the hearing and decision, the commission,
14 after delivery to the affected utility of a
15 statement in writing of its reasons therefore, may
16 suspend the operation of the schedule for a period
17 not to exceed 150 days beyond the date on which the
18 schedule would otherwise go into effect. If the
19 commission does not make a final
20 determination concerning any schedule of rates
21 prior to expiration of the period or periods of
22 suspension, the schedule shall be deemed to have
23 been approved by the commission. However, the 150-
24 day period shall be extended two days for each one
25 day of actual hearing on the merits of the case

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1 that exceeds 15 days. This approval is subject to
2 the authority of the commission thereafter to
3 continue a hearing in progress. The commission may
4 in its discretion fix temporary rates for any
5 period of suspension under this section. During
6 the suspension by the commission as above provided,
7 the rates in force when the suspended schedule was
8 filed shall continue in force unless the commission
9 shall establish a temporary rate.

10 The commission shall give preference to the hearing
11 and decision of questions arising under this
12 section over all other questions pending before it
13 and decide the same as speedily as possible.

14 (e) If the 150-day period has been extended, as
15 provided by Subsection (d) of this section, and the
16 commission fails to make its final determination of
17 rates within 150 days from the date that the
18 proposed change otherwise would have gone into
19 effect, the utility concerned may put a changed
20 rate, not to exceed the proposed rate, into effect
21 upon the filing with the commission of a bond
22 payable to the commission in an amount and with
23 sureties approved by the commission conditioned
24 upon refund and in a form approved by the
25 commission. The utility concerned shall refund or

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1 credit against future bills all sums collected
2 during the period of suspension in excess of the
3 rate finally ordered plus interest at the current
4 rate as finally determined by the commission.

5 (f) If, after hearing, the commission finds the rates
6 to be unreasonable or in any way in violation of
7 any provision of law, the commission shall
8 determine the level of rates to be charged or
9 applied by the utility for the service in question
10 and shall fix the same by order to be served upon
11 the utility; these rates are thereafter to be
12 observed until changed, as provided by this Act.
13 Except as provided by Subtitles H, I, and J of this
14 title, this subsection does not apply to a company
15 electing into Subtitle H or I of this title. Rates
16 established under this section after a company's
17 election must comply with Subtitle H or I of this
18 title.

19 (g) A rate or tariff set by the commission may not
20 authorize a utility to automatically adjust and
21 pass through to its customers changes in costs of
22 the utility. This subsection does not limit the
23 right of a public utility to pass through municipal
24 fees, including any increase in municipal fees. A
25 public utility that traditionally passes through

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1 municipal fees shall promptly pass through any
2 reductions.

3 (h) If the commission does not make a final
4 determination concerning an incumbent local
5 exchange company's schedule of rates prior to the
6 expiration of the 150-day suspension period, the
7 schedule of rates finally approved by the
8 commission shall become effective and the incumbent
9 local exchange company shall be entitled to collect
10 such rates from the date the 150-day suspension
11 period expired. Any surcharges or other charges
12 necessary to effectuate this subsection may not be
13 recovered over a period of less than 90 days from
14 the date of the commission's final order.

15 (i) An incumbent local exchange company may file with
16 the commission tariffs for services that have been
17 approved by the Federal Communications Commission,
18 provided that the tariffs include all rate
19 elements in the company's interstate tariffs. If
20 on review the filed tariffs contain the same rates,
21 terms, and conditions, as approved by the Federal
22 Communications Commission, the commission shall
23 order the rates to be the intrastate rates, terms
24 and conditions for the incumbent local exchange
25 company within 60 days of filing.

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1 Sec. 3.212. **CHANGES BY INCUMBENT LOCAL EXCHANGE CARRIERS;**
2 **HEARINGS;**
3 **SUSPENSION OF PROPOSED CHANGES.**
4 (a) An incumbent local exchange carrier may make
5 changes in its tariffed rules, regulations, or
6 practices that do not affect its charges or rates,
7 provided such changes to not impair competition or
8 violate other provisions of this Act, by filing the
9 proposed changes with the commission at least 35
10 days prior to the effective date of the changes.
11 The commission may require such notice to
12 ratepayers as it considers appropriate.
13 (b) The commission may on complaint by any affected
14 person or on its own motion hold a hearing, after
15 reasonable notice, to determine the propriety,
16 fairness or lawfulness of the change. Pending the
17 hearing and decision, the commission may suspend
18 the operation of the proposed changes for a period
19 not to exceed 120 days after the date on which the
20 changes would otherwise go into effect.
21 (c) The commission shall approve, deny, or modify the
22 proposed changes before expiration of the
23 suspension period. In any proceeding under this
24 section, the burden of proving that the requested
25 relief is in the public interest and complies with

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1 this Act shall be borne by the incumbent local
2 exchange company.

3 Sec. 3.213. SMALL INCUMBENT LOCAL EXCHANGE CARRIERS.

4 (a) The legislature finds that regulatory policy should
5 recognize differences between the small and large
6 incumbent local exchange carriers, that there are a
7 number of customer-owned telephone cooperatives and
8 small locally-owned investor companies, and that it
9 is appropriate to provide incentives and
10 flexibility to allow incumbent local exchange
11 carriers that serve the rural areas to provide
12 existing services and to introduce new technology
13 and new services in a prompt, efficient, and
14 economical manner.

15
16 (b) Except as otherwise provided by this section, an
17 incumbent local exchange carrier that is a
18 cooperative corporation, or that, together with all
19 affiliated incumbent local exchange companies, has
20 fewer than 15,000 access lines in service in this
21 state may offer extended local calling services or
22 new services on an optional basis or make minor
23 changes in its rates or tariffs if the carrier:
24 (1) files with the commission and the office a
25 statement of intent, as prescribed by

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- 1 Subsection (c) of this section, not later than
2 the 91st day before the date on which the
3 proposed change will take effect;
- 4 (2) provides notice as prescribed by Subsection
5 (d) of this section; and
- 6 (3) files with the commission affidavits verifying
7 the provision of notice as prescribed by
8 Subsection (d) of this section and verifying
9 that the statement of intent is not
10 inconsistent with this Act or federal law,
11 including the Telecommunications Act of 1996.
- 12 (c) The statement of intent required by Subsection
13 (b) (1) of this section must include:
- 14 (1) a copy of a resolution approving the proposed
15 change by the incumbent local exchange
16 telephone carrier's board of directors;
- 17 (2) a description of the services affected by the
18 proposed change;
- 19 (3) a copy of the proposed tariff for the affected
20 service;
- 21 (4) a copy of the customer notice required by
22 Subsection (b) (2) of this section;
- 23 (5) the number of access lines the company and
24 each affiliate has in service in this state;
25 and

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1 (6) the amount by which the company's total
2 regulated intrastate gross annual revenues
3 will increase or decrease as a result of the
4 proposed change.

5 (d) The incumbent local exchange company shall provide
6 notice to affected customers in the manner
7 prescribed by the commission not later than the
8 61st day before the date on which the proposed
9 change will take effect. Each notice prescribed by
10 the commission must include:

11 (1) a description of the services affected by the
12 proposed change;

13 (2) the effective date of the proposed change;

14 (3) an explanation of the customer's right to
15 petition the commission for a review under
16 Subsection (e) of this section, including the
17 number of persons required to petition before
18 a commission review will occur.

19 (4) an explanation of the customer's right to
20 obtain information concerning how to obtain a
21 copy of the proposed tariff from the company;

22 (5) the amount by which the company's total
23 regulated intrastate gross annual revenues
24 will increase or decrease as a result of the
25 proposed change; and

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1 (e) The commission shall review a proposed change filed under
2 this section if:

3 (1) the commission receives complaints relating to
4 the proposed change signed by the lesser of
5 five percent or 1,500 of the affected local
6 service customers;

7 (2) the commission receives a complaint relating
8 to the proposed change from an affected
9 intrastate access customer, or a group of
10 affected intrastate access customers, that in
11 the preceding 12 months accounted for more
12 than 10 percent of the company's total
13 intrastate gross access revenues;

14 (3) the proposed change is not a minor change;

15
16 (4) the company does not comply with the
17 procedural and legal requirements of this
18 section;

19 (5) the proposed change is inconsistent with the
20 commission's substantive policies as expressed
21 in its rules or with federal law.

22 (f) On review, the commission may suspend the proposed
23 tariff during the pendency of review.

24 (g) This section does not prohibit an incumbent local
25 exchange carrier from filing for a new service or

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1 rate change under another applicable section of
2 this Act or the commission from conducting a review
3 in accordance with Section 3.210 of this Act.

4 (h) In this section, "minor change" means a change,
5 including the restructuring of rates of existing
6 services, that decreases the rates or revenues of
7 the incumbent local exchange carrier or that,
8 together with any other rate or proposed or
9 approved tariff changes in the 12 months preceding
10 the date on which the proposed change will take
11 effect, results in an increase of the company's
12 total regulated intrastate
13 gross annual revenues by not more than five
14 percent. Further, with regard to a change to a
15 basic local access line rate, a minor change may
16 not, together with any other change to that rate
17 that went into effect during the 12 months
18 preceding the proposed effective date of the
19 requested change, result in an increase of more
20 than 10 percent.

21 (i) Rates established under this section must be in
22 accordance with the rate-setting principles of this
23 subtitle. However, carriers may provide to their
24 employees free or reduced rates for services.

25 (j) The commission shall, within 120 days of the

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1 effective date of this section, examine its
2 policies, its reporting requirements, and its
3 procedural and substantive rules as they relate to
4 rural and small incumbent local exchange carriers
5 and cooperatives to eliminate or revise those that
6 place unnecessary burdens and expenses on those
7 carriers. Notwithstanding any other provisions of
8 this Act, the commission shall consider and may
9 adopt policies that include the following:

- 10 (A) policies to allow those companies to provide
11 required information by report or otherwise as
12 necessary, including a rate filing package
13 when required, in substantially less
14 burdensome and complex form than required of
15 larger incumbent local exchange companies;
- 16 (B) policies that permit consideration of the
17 company's future construction plans and
18 operational changes in evaluating the
19 reasonableness of current rates;
- 20 (C) policies that provide for evaluation of the
21 overall reasonableness of current rates no
22 more frequently than once every three years;
- 23 (D) policies that permit companies to change
24 depreciation and amortization rates when
25 customer rates are not affected by notice to

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1 the commission, subject to review by the
2 commission in a proceeding under Section 3.210
3 or 3.211 of this Act;

4 (E) policies to allow the incumbent local exchange
5 companies to adopt for new services the rates
6 for the same or substantially similar services
7 offered by a larger incumbent local exchange
8 company, without commission requirement of
9 additional cost justification; and

10 (F) policies that allow an incumbent local
11 exchange carrier, instead of any management
12 audit that would otherwise be required by law,
13 policy, or rule, to submit to the commission
14 financial audits of the company regularly
15 performed by independent auditors or required
16 and performed as a result of the company's
17 participation in federal or state financing or
18 revenue-sharing programs.

19 (k) The commission is granted all necessary power and
20 authority to prescribe and collect fees and
21 assessments from incumbent local exchange companies
22 necessary to recover the commission's and the
23 office's costs of activities carried out and
24 services provided under this section, Subsection
25 (h) of Section 3.211, and Section 3.212 and 3.2135

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1 of this Act. [Sec. 43B]
2 (l) Except as provided in Subsection (j) this section
3 may not apply to any incumbent local exchange
4 company that is a cooperative corporation partially
5 deregulated under the provisions of Section 3.2135
6 of this Act.

7 Sec. 3.2135. COOPERATIVE CORPORATIONS.

8 (a) An incumbent local exchange carrier that is a
9 cooperative corporation may vote to partially
10 deregulate the cooperative by sending a ballot to
11 each cooperative member. The ballot may be
12 included in a bill or sent separately. The ballot
13 shall provide for voting for or against the
14 proposition: "Authorizing the partial deregulation
15 of the (name of the cooperative)."

16 (b) The cooperative is deemed to be partially
17 deregulated if a majority of the ballots returned
18 to the cooperative not later than the 45th day
19 after the date on which ballots are mailed factor
20 deregulation.

21 (c) After the initial balloting, the cooperative may
22 offer extended local calling services, offer new
23 services on an optional basis, or make changes in
24 its rates or tariffs if the cooperative:

25 (1) provides notice of the proposed action under

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- 1 this section to all customers and
2 municipalities as prescribed by Subsection (e)
3 of this section;
- 4 (2) files with the commission affidavits verifying
5 the provision of notice as prescribed by
6 Subsection (f) of this section; and
- 7 (3) files a statement of intent under Subsection
8 (d) of this section.
- 9 (d) A statement of intent to use this section must be
10 filed with the commission and the office not later
11 than the 61st day before the date on which a
12 proposed change will take effect and must include:
- 13 (1) a copy of a resolution approving the proposed
14 action and authorizing the filing of the
15 statement of intent signed by a majority of
16 the members of the cooperative's board of
17 directors;
- 18 (2) a description of the services affected by the
19 proposed action;
- 20 (3) a copy of the proposed tariff for the affected
21 service; and
- 22 (4) a copy of the customer notice required by this
23 section.
- 24 (e) The cooperative shall provide to all affected
25 customers and parties, including municipalities, at

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1 least two notices of the proposed action by bill
2 insert or by individual notice. The cooperative
3 shall provide the first notice not later than the
4 61st day before the date on which the proposed
5 action will take effect. The cooperative shall
6 provide the last notice not later than the 31st day
7 before the date

8
9 on which the proposed action will take effect.

10 Each notice prescribed by this subsection must
11 include:

- 12 (1) a description of the services affected by the
13 proposed action;
- 14 (2) the effective date of the proposed action;
- 15 (3) an explanation of the customer's right to
16 petition the commission for a review under
17 Subsection (g) of this section;
- 18 (4) an explanation of the customer's right to
19 obtain a copy of the proposed tariff from the
20 cooperative;
- 21 (5) the amount by which the cooperative's total
22 gross annual revenues will increase or
23 decrease and a statement explaining the effect
24 on the cooperative revenues as a result of the
25 proposed action; and

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1 (6) a list of rates that are affected by the
2 proposed rate action, showing the effect of
3 the proposed action on such rate.

4 (f) Not later than the 15th day before the date on
5 which the proposed action will take effect, the
6 cooperative shall file with the commission
7 affidavits that verify that the cooperative
8 provided each notice prescribed under Subsection
9 (e) of this section.

10 (g) (1) The commission shall review a proposed action
11 filed under this section if:

12 (A) the commission receives, not later than
13 the 45th day after the first notice is
14 provided under Subsection (e) of this
15 section, complaints relating to the
16 proposed action:

17 (i) signed by at least five percent of
18 the affected local service
19 customers; or

20
21 (ii) from an affected intrastate access
22 customer, or group of affected
23 intrastate access customers, that
24 in the preceding 12 months
25 accounted for more than 10 percent

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of the cooperative's total
intrastate access revenues;

(B) the cooperative does not comply with the
procedural requirements of this section;
or

(C) the proposed action is inconsistent with
the commission's substantive policies as
expressed in its rules.

(2) If the commission conducts a review of the
proposed action under this subsection before
the effective date, the commission may suspend
the proposed actions of the cooperative during
the pendency of the review.

(h) A cooperative that is partially deregulated under
this section may vote to reverse the deregulation
by sending a ballot to each cooperative member.
Upon its own motion or within 60 days upon receipt
of a written request of 10 percent of its members,
the cooperative's board of directors shall
reballot. The ballot may be included in a bill or
sent separately. The ballot shall provide for
voting for or against the proposition: "Reversing
the partial deregulation of the (name of the
cooperative)." The partial deregulation is
reversed if a majority of the ballots returned to

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1 the cooperative not later than the 45th day after
2 the date on which the ballots are mailed favor
3 reversal.

4 (i) The commission by rule shall prescribe the voting
5 procedures a cooperative is required to use under
6 this section.

7
8 (j) This section does not:

9 (1) prohibit a cooperative from filing for a new
10 service or rate change under another
11 applicable section of this Act; or

12 (2) affect the application of other provisions of
13 this Act not directly related to ratemaking or
14 the authority of the commission to require the
15 cooperative to file reports as required under
16 this Act, Section 3.213(j) of this Act, or
17 under the rules adopted by the commission.

18 (k) Notwithstanding any other provision of this
19 section, the commission may conduct a review in
20 accordance with Section 3.210 of this Act.

21 Sec. 3.214. RATES FOR AREAS NOT WITHIN MUNICIPALITY.

22 Public utility rates for areas not within any
23 municipality may not exceed without commission approval
24 115 percent of the average of all rates for similar
25 services of all municipalities served by the same utility

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1 within the same county.

2 Sec. 3. 215. UNREASONABLE PREFERENCE OR PREJUDICE AS TO RATES

3 OR

4 SERVICES. A public utility may not, as to rates or
5 services, make or grant any unreasonable preference or
6 advantage to any corporation or person within any
7 classification or subject any corporation or person
8 within any classification to any unreasonable prejudice
9 or disadvantage. A public utility may not establish and
10 maintain

11 any unreasonable differences as to rates of service
12 either as between localities or as between classes of
13 service.

14 Sec. 3. 216. EQUALITY OF RATES AND SERVICES

15 (a) A public utility may not, directly or indirectly,
16 by any device whatsoever or in any manner, charge,
17 demand, collect, or receive from any person a
18 greater or less compensation for any service
19 rendered or to be rendered by the utility than that
20 prescribed in the schedule of rates of the public
21 utility applicable thereto when filed in the manner
22 provided in this Act, nor may any person knowingly
23 receive or accept any service from a public utility
24 for a compensation greater or less than that
25 prescribed in the schedules.

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1 (b) Nothing in this Act shall prevent a cooperative
2 corporation from returning to its members the whole
3 or any part of the net earnings resulting from its
4 operations in proportion to their purchases from or
5 through the corporation.

6 Sec. 3. 217. DISCRIMINATION; RESTRICTION ON COMPETITION. A
7 public utility may
8 not discriminate against any person or corporation that
9 sells or leases equipment or performs services in
10 competition with the public utility, nor may any public
11 utility engage in any other practice that tends to
12 restrict or impair such competition.

13 Sec. 3. 218. TELECOMMUNICATIONS UTILITY PROVIDING SERVICE TO
14 THE STATE;
15 DELINQUENT PAYMENT CHARGES. A telecommunications utility
16 providing any service to the state, including service to
17 an agency in any branch of state government, may not
18 charge a fee, penalty, interest, or other charge for
19 delinquent payment of a bill for that service.

20
21 SUBTITLE E. CERTIFICATES OF CONVENIENCE AND NECESSITY

22 Sec. 3. 251. CERTIFICATE REQUIRED.

23 (a) A public utility may not in any way render service
24 directly or indirectly to the public under any
25 franchise or permit without first having obtained

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1 from the

2
3 commission a certificate that the present or future
4 public convenience and necessity require or will
5 require such installation, operation, or extension.

6 (b) Except as otherwise provided in this subtitle, a
7 public utility may not furnish, make available,
8 render or extend retail public utility service to
9 any area to which retail utility service is being
10 lawfully furnished by another public utility,
11 without first having obtained a certificate of
12 public convenience and necessity that includes the
13 area in which the consuming facility is located.

14 (c) A person may not provide local exchange telephone
15 service, basic local telecommunications service or
16 switched access service without a certificate of
17 convenience and necessity, a certificate of
18 operating authority, or a service provider
19 certificate of operating authority.

20 (d) A municipality may not receive a certificate of
21 convenience and necessity, certificate of operating
22 authority, or service provider certificate of
23 operating authority under this Act. In addition, a
24 municipality or municipal electric system may not
25 offer for sale to the public, either directly or

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1 indirectly through a telecommunications provider, a
2 service for which a certificate is required or any
3 non-switched telecommunications service to be used
4 to provide connections between customers' premises
5 within the exchange or between a customer's
6 premises and a long distance provider serving the
7 exchange.

8 Sec. 3.252. EXCEPTIONS.

9 (a) A telecommunications utility is not required to
10 secure a certificate of public convenience and
11 necessity, for:

12
13 (1) services offered by non-dominant
14 telecommunications utilities within an
15 incumbent local exchange carrier's certified
16 area, by virtue of the development of
17 competitive markets through resale, number
18 portability, dialing parity, access to rights-
19 of-way, interconnection, unbundled access,
20 resale, collocation or other steps required or
21 authorized by this Act of the
22 Telecommunications Act of 1996.

23 (2) an extension into territory contiguous to that
24 already served by it and not receiving similar
25 service from another telecommunications

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- 1 utility and not within the certificated area
2 of another telecommunications utility;
3 (3) an extension within or to territory already
4 served by it or to be served by it under a
5 certificate of public convenience and
6 necessity, certificate of operating authority,
7 or service provider certificate of operating
8 authority;
9 (4) operation, extension, or service in progress
10 on January 1, 1998; or
11 (5) interexchange telecommunications service,
12 private line service, shared tenant service,
13 specialized communications common carrier
14 service, commercial mobile service, or
15 operator service as defined by Section
16 3.052(a) of this Act.
17 (b) Any extensions allowed by Subsection (a) of this
18 section shall be limited to devices for
19 interconnection of existing facilities or devices
20 used solely for transmitting
21 telecommunications utility services from existing
22 facilities to customers of retail utility service.
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Sec. 3.253. MAPS; EVIDENCE OF CONSENT.

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1 (a) On or before 90 days after January 1, 1999, or at a
2 later date on request in writing by a public
3 utility when good cause is shown, or at such later
4 dates as the commission may order, each public
5 utility shall file with the commission a map or
6 maps showing all its facilities and illustrating
7 separately facilities for transmission and
8 distribution of its services.

9 (b) Each applicant for a certificate shall file with
10 the commission such evidence as is required by the
11 commission to show that the applicant has received
12 the required consent, franchise, or permit of the
13 proper municipality or other public authority.

14 Sec. 3.254. PRICE DEREGULATION BY INCUMBENT LOCAL EXCHANGE
15 CARRIER

16 UNDER THE MARKET POWER TEST.

17 (a) Notwithstanding any other provisions of this Act,
18 but consistent with federal law, on notice and
19 hearing, the commission may grant price
20 deregulation of one or more services in one or more
21 geographic markets if the commission determines
22 that the incumbent local exchange carrier is no
23 longer dominant as to that service or services in
24 that particular geographic market. For purposes of
25 this section only, in determining a particular

1 geographic market, the commission shall consider
2 economic and technical conditions of the market.
3 Once a service in a particular market is price-
4 deregulated under this section, the incumbent local
5 exchange carrier may set the rate for the
6 deregulated services at any level above the
7 service's costs.

8 (b) To determine that an incumbent local exchange
9 carrier is no longer dominant as to one or more
10 services in a particular geographic market, the
11 commission must find that effective competitive
12 alternatives exist and that the incumbent local
13 exchange carrier does not have sufficient market
14 power to control the price of the service(s) within
15 a specified geographic area in a manner that is
16 adverse to consumers or competitors.

17 (c) The commission shall consider the following factors
18 in determining whether the incumbent local exchange
19 carrier is dominant as to a specific service in a
20 particular geographic area:

21 (1) number and size of telecommunications
22 utilities or other persons providing the same,
23 equivalent, or substitutable service in the
24 relevant market and the extent to which the
25 service is available in the relevant market;

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- 1 (2) ability of customers in the relevant market to
2 obtain the same, equivalent or substitutable
3 service at comparable rates, terms, and
4 conditions;
- 5 (3) ability of telecommunications utilities or
6 other persons to make the same, equivalent, or
7 substitutable service readily available in the
8 relevant market at comparable rates, terms and
9 conditions;
- 10 (4) proportion of the relevant market that is
11 currently being provided the service by a
12 telecommunications utility other than the
13 incumbent local exchange company or
14 certificate of operating authority holder that
15 is a dominant carrier; and
- 16 (5) other relevant information deemed necessary by
17 the commission.
- 18 (d) The commission, on its own motion, or on a
19 complaint that the commission deems has merit, is
20 granted all necessary power and authority to assert
21 or reassert regulation over a specific service in a
22 particular geographic market if the incumbent local
23 exchange carrier is found to again be dominant as
24 to that services in that geographic market(s).
- 25 (e) On request of an incumbent local exchange carrier

1 in conjunction with an application under this
2 section, the commission shall conduct
3 investigations to determine the existence, impact,
4 and scope of competition in the particular
5 geographic and service markets at issue and in
6 connection therewith shall call and hold hearings,
7 may issue subpoenas to compel the attendance of
8 witnesses and the production of papers and
9 documents, has any other powers, whether
10 specifically designated or implied, necessary and
11 convenient to the investigation, and may make
12 findings of fact and decisions with respect to
13 those markets.

14 (f) The parties to the proceedings shall be entitled to
15 use the results of the investigation required to be
16 conducted under Subsection (e) of this section in
17 an application for pricing flexibility.

18 (g) In conjunction with its authority to collect and
19 compile information, the commission may collect
20 reports from telecommunications utilities. Any
21 information contained in the reports claimed to be
22 confidential for competitive purposes shall be
23 maintained as confidential by the commission, and
24 the information is exempt from disclosure. The
25 commission shall aggregate the information to the

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maximum extent possible considering the purpose of
the proceeding to protect the confidential nature
of the information.

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1 Sec. 3. 254. CONTINUOUS AND ADEQUATE SERVICE; DISCONTINUANCE,
2 REDUCTION, OR IMPAIRMENT OF SERVICE.

3 (a) A public utility that is granted a certificate of
4 convenience and necessity in an area shall be
5 required to offer to any customer in its area all
6 basic local telecommunications services and
7 exchange access and shall render continuous and
8 adequate service within the area or areas.

9 (b) Unless the commission issues a certificate that
10 neither the present or future convenience and
11 necessity will be adversely affected, the holder of
12 a certificate may not discontinue, reduce, or
13 impair service to a certified service area or part
14 thereof except for:

- 15 (1) nonpayment of charges;
16 (2) nonuse; or
17 (3) other similar reasons in the usual course of
18 business.

19 (c) Any discontinuance, reduction, or impairment of
20 service, whether with or without approval of the
21 commission, shall be in conformity with and subject
22 to such conditions, restrictions and limitations as
23 the commission shall prescribe. [Sec. 58]

24 Sec. 3. 255. DISCONTINUATION OF SERVICE BY NON-DOMINANT
25 TELECOMMUNICATIONS CARRIER.

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- (a) Notwithstanding Section 3.254 of this Act, a telecommunications utility may:
 - (1) discontinue an optional service that is not essential to the provision of basic local telecommunications service; or
 - (2) cease operations within a local exchange area.

- (b) Before such telecommunications utility discontinues an optional service or ceases operations, the utility must provide notice of the intended action to the commission and each affected customer in the manner required by the commission.

- (c) Such telecommunications utility is entitled to discontinue an optional service on or after the 61st day after the date on which the utility provides the notice required by Subsection (b) of this section.

- (d) Such telecommunications utility may not cease operations within a local exchange unless:
 - (1) another provider of basic local telecommunications services has adequate facilities and capacity to serve the customers in the area; and
 - (2) the commission authorizes telecommunications' utility to cease operations.

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1 (e) The commission may not authorize such
2 telecommunications utility to cease operations
3 under subsection (d) of this section before the
4 61st day after the date on which the utility
5 provides the notice required by subsection (b) of
6 this section. The commission may enter an order
7 under this subsection administratively unless the
8 commission receives a complaint from an affected
9 person.

10 Sec. 3.256. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE. If
11 the commission

12 determines that a purchaser, assignee, or lessee is
13 capable of rendering adequate service, a public utility
14 may sell, assign, or lease a certificate of public
15 convenience and necessity any rights obtained under the
16 certificate. The sale, assignment, or lease shall be on
17 conditions prescribed by the commission.

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Sec. 3.257. DIRECTORY LISTINGS AND ASSISTANCE

- (a) Companies providing local exchange telephone service shall negotiate the terms and conditions of printed directory listings and directory assistance within overlapping certificated areas.
- (b) On complaint by an incumbent local exchange carrier, the commission may resolve disputes between the parties and, if necessary issue an order setting the terms and conditions of the directory listings or directory assistance.
- (c) This section does not affect the authority of an incumbent local exchange carrier to voluntarily conduct negotiations with another telecommunications utility.

Sec. 3.262. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE;
EXTENDED

AREA TOLL-FREE TELEPHONE SERVICE.

- (a) After notice and hearing, the commission may:
 - (1) order a telecommunications utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the company to provide such improved service;

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(2) order two or more telecommunications utilities to establish specified facilities for the interconnecting service;

(3) order a telephone company or telephone companies to provide extended area toll-free service within a specified metropolitan area where there is a sufficient community of interest within the area and such service can reasonably be provided; and

(4) order one or more telephone companies to provide optional extended area service within a specified calling area if provision of the service is jointly agreed to by the representatives of each affected telephone company and the representatives of a political subdivision or subdivisions within the proposed common calling area, provided that the proposed common calling area has a single continuous boundary.

(b) If more than one political subdivision is affected by a proposed optional calling plan under Subsection (a) (4) of this section, the agreement of each political subdivision is not required. The

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1 commission may not adopt rules that diminish in any
2 manner the ability of a political subdivision or
3 affected telephone company to enter into joint
4 agreements for optional extended area calling
5 service. In this subsection and in Subsection
6 (a)(4) of this section, "political subdivision"
7 means a county or municipality or an unincorporated
8 town or village that has 275 or more access lines.

9 Sec. 3.258. PAY TELEPHONES.

- 10 (a) The right of a provider of pay telephone service to
11 set the provider's rates and charges and the
12 commission's authority over the pay telephone
13 service rates of incumbent local exchange companies
14 is expressly limited by this section.
- 15 (b) A provider of pay telephone service may not impose
16 on pay phone end users any charge for local
17 directory assistance or calls made under emergency
18 conditions.
- 19 (c) The commission shall establish a limit on the
20 charge that may be imposed for a pay telephone coin
21 sent-paid call within the local exchange company's
22 toll-free calling area. The commission may also
23 establish a statewide ceiling on the charge that
24 may be imposed by a provider of pay telephone
25 service for local calls which are collect or

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1 operator-assisted or paid by credit card or calling
2 card, provided that the

3 commission shall not establish the ceiling at less
4 than the applicable local rates for such calls of
5 any of the four largest interexchange carriers
6 operating in the State.

7 (d) A provider of pay telephone service may impose a
8 set use fee not exceeding 25 cents at the point at
9 which the call is initiated for each "1-800" type
10 call made from a pay telephone, provided that:

11 (1) except for pay telephones of local exchange
12 companies, the pay telephone is registered
13 with the commission and the provider certifies
14 that the pay telephone is in compliance with
15 commission rules regarding the provision of
16 pay telephone service;

17 (2) the imposition of the set use fee is not
18 inconsistent with federal law;

19 (3) the fee is not imposed for any local call, 9-
20 1-1 call, or local directory assistance call;

21 (4) the fee is not imposed for a call that is
22 covered by the Telephone Operator Consumer
23 Services Improvement Act of 1990 (47 U. S. C.
24 Section 226);

25 (5) the pay telephone service provider causes to

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1 be posted on each pay telephone instrument, in
2 plain sight of the user and in a manner
3 consistent with existing commission
4 requirements for posting information, the fact
5 that the surcharge will apply to those calls;
6 and

7 (6) the commission may not impose on a local
8 exchange company the duty or obligation to
9 record the use of pay telephone service, bill
10 or collect for the

11
12 use, or remit the fee provided by this
13 subsection to the provider of the service.

14 (e) A provider of pay telephone service, other than an
15 incumbent local exchange company, may not charge
16 for credit card, calling card, or live or automated
17 operator-handled calls a rate or charge that is an
18 amount greater than the authorized rates and
19 charges published, in the eight newspapers having
20 the largest circulation in this state, on March 18,
21 1995, provided that the pay phone rates of an
22 incumbent local exchange company subject to
23 Subtitle G of this title are governed by that
24 subtitle. The published rates remain in effect
25 until changed by the legislature.

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- 1 (f) The commission shall adopt rules within 180 days
2 from the effective date of this section that
3 require every provider of pay telephone service not
4 holding a certificate of convenience and necessity
5 to register with the commission. A provider of pay
6 telephone service must be registered with the
7 commission in order to do business in this state.
- 8 (g) The commission may order disconnection of service
9 for up to one year for repeat violations of
10 commission rules.
- 11 (h) The commission may adopt rules regarding
12 information to be posted on pay telephone
13 instruments, but those rules may not require a
14 provider of pay telephone service or an affiliate
15 of a provider to police the compliance with those
16 rules by another provider of pay telephone service.
- 17 (i) In this section, "provider of pay telephone
18 service" means a subscriber to customer-owned pay
19 telephone service, an incumbent local exchange
20 company providing pay telephone service, and any
21 other entity providing pay telephone service.

22 Sec. 3.259. REVOCATION OR AMENDMENT OF CERTIFICATE.

- 23 (a) The commission at any time after notice and hearing
24 may revoke or amend any existing certificate of
25 convenience and necessity if it finds that the

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1 certificate holder has never provided or is no
2 longer providing service in the area or part of the
3 area covered by the certificate.

4 (b) When the certificate of any public utility is
5 revoked or amended, the commission may require one
6 or more telecommunications utilities to provide
7 service in the area in question.

8
9 SUBTITLE F. INCENTIVE REGULATION OF TELECOMMUNICATIONS
10 UTILITIES

11 Sec. 3.301. POLICY. Given the rapid expansion of competition
12 in the telecommunications

13 industry and the requirements of the federal
14 Telecommunications Act of 1996, it is the Legislature's
15 policy to effect an orderly and expeditious transition
16 from traditional return on invested capital rate
17 regulation to a fully competitive telecommunications
18 marketplace where all telecommunications providers
19 compete on fair terms.

20 Sec. 3.302. OPTION TO CANCEL RATE TARIFFS AND CHARGE COST-
21 BASED PRICES

22 FOR SERVICES. Upon establishing in a full evidentiary
23 hearing, with prior notice to all affected persons, that
24 true competitive market conditions prevail in the state
25 or in a local exchange area(s) for one or more services

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1 of a dominant telecommunications utility or an incumbent
2 local exchange carrier, an applicant dominant
3 telecommunications utility or incumbent local exchange
4 carrier may, by commission order, cancel its rate tariffs
5 as to such competitive service or services in such
6 geographical area(s) and adopt cost-based prices for such
7 service or services. This section shall not conflict
8 with this Act or with
9 federal law or authorize below-cost or other predatory
10 pricing to the detriment of any competitor.

11 Sec. 3.303. NOTICE. Each carrier under this subtitle shall
12 give written notice
13 to all customers and all competitors of its application
14 and, if it is granted by the commission's order, written
15 notice of the order and the new prices.

16
17 SUBTITLE G. INFRASTRUCTURE

18 Sec. 3.325. INFRASTRUCTURE POLICY AND GOALS.

19 (a) It is the goal of this State to facilitate and
20 promote the deployment of an advanced
21 telecommunications infrastructure in order to spur
22 economic development throughout New Mexico. The
23 primary means of achieving this goal shall be
24 through encouraging private investment in the
25 state's telecommunications infrastructure by

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1 creating incentives for such investment and
2 promoting the development of competition. The best
3 way to bring the benefits of an advanced
4 telecommunications network infrastructure to New
5 Mexico communities is through innovation and
6 competition among all the state's communications
7 provider. Competition will provide New Mexico a
8 choice of telecommunications providers and will
9 drive technology deployment, innovation, service
10 quality, and cost-based prices as competing firms
11 seek to satisfy customer needs.

- 12
- 13 (b) In implementing this section, the commission shall
14 consider the following policy goals of this State:
- 15 (1) ensure the availability of the widest possible
16 range of competitive choices in the provision
17 of telecommunications services and facilities;
- 18 (2) foster competition and rely on market forces
19 where competition exists to determine the
20 price, terms, availability, and conditions of
21 service in markets in which competition
22 exists;
- 23 (3) ensure the universal availability of basic
24 local telecommunications services at
25 reasonable rates;

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- 1 (4) encourage the continued development and
2 deployment of advanced, reliable capabilities
3 and services in telecommunications networks;
- 4 (5) assure interconnection and interoperability,
5 based on uniform technical standards, among
6 telecommunications carriers;
- 7 (6) eliminate existing unnecessary administrative
8 procedures which impose regulatory barriers to
9 competition and assure that competitive entry
10 is fostered on an economically rational basis;
- 11 (7) assure consumer protection and protection
12 against anticompetitive conduct;
- 13 (8) regulate providers of services only to the
14 extent they have market power to control the
15 price of services to customers or exclude
16 competitors from the market;
- 17 (9) encourage cost-based pricing of
18 telecommunications services so that consumers
19 pay a fair price for services that they use;
20 and
- 21 (10) develop quality of service standards for local
22 exchange companies as it deems appropriate to
23 place New Mexico among the leaders in
24 deployment of an advanced telecommunications
25 infrastructure.

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- 1 (c) The Commission shall, upon notice conduct rule-
2 making proceedings to establish the terms and
3 deadlines for dominant utilities and incumbent
4 local exchange companies who elect or do not elect
5 the incentive regulation in Subtitle F, to ensure
6 that the following infrastructure goals are
7 achieved by all such companies:
- 8 (1) incumbent local exchange companies shall make
9 access to end-to-end digital connectivity
10 available to all customers in their
11 territories by December 31, 1999.
- 12 (2) Fifty percent of the local exchange access
13 lines in each local exchange company's
14 territory must be served by a digital central
15 office switch by January 1, 2001.
- 16 (3) All company new central office switches
17 installed in New Mexico must be digital, or
18 technologically equal to or superior to
19 digital, after September 1, 1999. At a
20 minimum, each new central office switch
21 installed after September 1, 2000, must be
22 capable of providing Integrated Services
23 Digital network (ISDN) services in a manner
24 consistent with generally accepted national
25 standards.

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1 (4) incumbent local exchange companies' public
2 switched network backbone inter-office
3 facilities must employ broadband facilities
4 capable of at least 45 megabits per second, or
5 at lower bandwidths if evolving technology
6 permits the delivery of video signal at
7 quality levels comparable to a television
8 broadcast signal, by January 1, 2000. This
9 requirement shall not extend to local loop
10 facilities.

11 (d) (1) A company of greater than fortythousand access
12 lines shall also install Common Channel
13 Signaling 7 capability in all central offices
14 by January 1, 2000.

15 (2) A company of greater than fortythousand access
16 lines shall connect all of its serving central
17 offices to their respective LATA tandem
18 central offices with optical fiber or
19 equivalent facilities by January 1, 2001.

20 (3) A company serving more than ten thousand
21 access lines and fewer than forty thousand
22 access lines shall provide digital switching
23 central offices in all exchanges by January 1,
24 2000.

25 (e) The commission may consider waivers of Subsections

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1 (c) (1) - (4) of this section for local exchange
2 companies serving fewer than ten thousand lines, if
3 the incumbent local exchange company demonstrates
4 that such investment is not viable economically,
5 after due consideration is given to the public
6 benefits which would result from compliance with
7 such requirements; and, in addition, may consider a
8 temporary extension of any period with respect to
9 Subsections (c) (1) - (4) of this section for electing
10 local exchange companies serving fewer than two
11 million but more than one million lines, if the
12 local exchange company demonstrates that such
13 extension is in the public interest.

14 (f) The commission may not consider the cost of
15 implementing Subsection (c) or (d) of this section
16 in determining whether a company is entitled to a
17 rate increase under
18
19 this subtitle or an increase in universal service
20 funds under Section 3.352 of this Act.

21 Sec. 3.26. INFRASTRUCTURE COMMITMENT TO CERTAIN ENTITIES.

22 (a) (1) It is the intent of this section to establish
23 a telecommunications infrastructure that
24 interconnects public entities described in
25 this section. The interconnection of these

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1 entities requires ubiquitous, broadband,
2 digital services for voice, video, and data
3 within the local serving area. The ubiquitous
4 nature of these connections must also allow
5 individual networks of these entities to
6 interconnect and interoperate across the
7 broadband digital service infrastructure. The
8 delivery of these advanced telecommunications
9 services also will require collaborations and
10 partnerships of public, private, and
11 commercial telecommunications service network
12 providers.

13 (2) The goal of this section is to interconnect
14 and aggregate the connections to every entity
15 described in this section, within the local
16 serving area. It is further intended that the
17 implementation of the infrastructure as
18 defined within this section connect all the
19 entities requesting the services offered under
20 this section.

21 (b) (1) (A) On customer request, a company shall
22 provide broadband digital service that
23 is capable of providing transmission
24 speeds of up to 45 megabits per second
25 or better for customer applications and

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1 other customized or packaged network
2 services (private network services) to
3 an entity described in this section for
4 their private and sole use except as
5 provided in Subsection (d) of this
6 section:

7 (i) educational institutions, as that
8 term is defined in Section ____ of
9 this Act.

10 (ii) libraries, as that term is defined
11 in Section _____ of this Act;

12 (iii) nonprofit telemedicine centers
13 of academic health centers,
14 public or not-for-profit
15 hospitals, or state-licensed
16 health care practitioners;

17 (iv) public not-for-profit hospitals;

18 (v) projects funded by the
19 Telecommunications Infrastructure
20 Fund described in this Act; or

21 (vi) any legally constituted consortium
22 or group of entities listed in
23 Subparagraphs (I)-(v) of this
24 paragraph.

25 (B) Such private network services shall be

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provided pursuant to customer specific contracts at a rate that is 105 percent of the long run incremental cost including installation, of the services.

- (C) Each such contract shall be filed with the commission but not require the approval of the commission.
- (D) A company shall file a flat monthly tariff rate for point-to-point intraLATA 1.544 megabits per second service for the entities specified in Subsection (b)(1)(A) of this section which shall be distance insensitive and be no higher than 105 percent of the statewide average long run incremental costs, including installation, of the service.

- (E) A company shall provide point-to-point 45 megabits per second intraLATA services when requested by an entity specified in Subsection (b)(1)(A) of this section pursuant to customer specific contracts except that the interoffice portion of the service, if

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any, will be recovered on a statewide average distance insensitive basis. The rate for this service shall be no higher than 105 percent of long run incremental cost, including installation, of the service.

(F) A local exchange company shall provide an entity described in this section with broadband digital special access service to interexchange carriers at no higher than 105 percent of the long run incremental cost, including installation, of such service.

(G) On customer request, a company shall provide expanded interconnection (virtual collocation) consistent with the rules adopted by the commission pursuant to Section _____ of this Act to an entity specified in Subsection (b)(1)(A) of this section at 105 percent of long run incremental cost, including installation. Such entities shall not have to qualify for such expanded interconnection if it is ordered by the commission.

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- (H) The legislature finds that an entity described in this section warrants preferred rate treatment provided that any such rates cover the long run incremental cost of the services provided.
- (I) Notwithstanding any other provision of this Act, a local exchange company shall not be subject to a complaint under this section except by an entity specified in this section complaining that the provision of private network services under this section was provided preferentially to a similarly situated customer.
- (2) An entity receiving the services provided under this section may not be assessed special construction or installation charges.
- (3) An educational institution or a library may elect the rate treatment provided in this section or the discount provided by Section _____ of this Act.
- (4) Notwithstanding the pricing flexibility authorized by this Act, a company's rates for the services provided under this section may

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1 not be increased for six years from the date
2 of election except as otherwise provided in
3 customer specific contracts.

4 (5) On customer request by an educational
5 institution or library in exchanges of a
6 company serving more than 40,000 access lines
7 in which toll-free access to the Internet is
8 not available, the local exchange company
9 shall make available a toll-free connection or
10 toll-free dialing arrangement for use by
11 educational institutions or libraries in
12 accessing the Internet in an exchange in which
13 Internet access is available on a toll-free
14 basis. The connection or dialing arrangement
15 shall be provided at no charge to the
16 educational institution or library until
17 Internet access becomes available in the
18 exchange of the requesting educational
19 institution or library. The local exchange
20 company is not required to arrange for
21 Internet access or to pay Internet charges for
22 the requesting educational institution or
23 library.

24 (6) A company shall give priority to serving rural
25 areas, designated as critically underserved,

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1 medically or educationally, and educational
2 institutions with high percentages of
3 economically disadvantaged students.

4 (c) The private network services provided pursuant to
5 this section may be interconnected with other
6 similar networks for distance learning,
7 telemedicine, and information sharing purposes.

8 (d) The private network services provided pursuant to
9 this section may not be shared or resold to other
10 customers except that such services may be used by
11 and shared among the entities described in
12 Subsection (b)(1)9A) of this section. The services
13 provided pursuant to this section may not be
14 required to be resold to other customers at the
15 rates provided in this section; however, the
16 prohibition contained in this subsection is not
17 intended to preclude the otherwise permitted resale
18 of other services which may be offered by an
19 electing company using the same facilities or a
20 portion thereof, which are used to provide the
21 private network services offered under this
22 section.

23 (e) For purposes of this section, the term
24 "telemedicine center" means a facility equipped to
25 transmit by video, data, or voice service medical

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1 information for the purpose of diagnosis or
2 treatment of illness or disease, owned or operated
3 by a public or not-for-profit hospital including an
4 academic health center or such a facility owned by
5 any state-licensed health care practitioner or
6 group of practitioners and operated on a nonprofit
7 basis.

8
9 (f) The State Purchasing and General Services Act
10 (_____New Mexico Civil Statutes) does not apply
11 to contracts entered into under this section.

12 (g) The commission may not consider the cost of
13 implementing Subsection (b)(c), or (d) of this
14 section in determining whether an electing company
15 is entitled to a rate increase under this subtitle
16 or increased universal service funds under Section
17 ____ of this Act.

18
19 SUBTITLE H. COMPETITIVE SAFEGUARDS AND
20 JOINT FEDERAL-STATE UNIVERSAL SERVICE BOARD

21 Sec. 3. 350. **COMPETITIVE SAFEGUARDS.**

22 To the extent necessary to ensure that competition in
23 telecommunications is fair to all participants and to
24 accelerate the improvement of telecommunications in the
25 state, the commission shall ensure that rates and

1 regulations are not preferential or discriminatory and
2 that the transition to a fully competitive
3 telecommunications industry is pursued in an expeditious
4 manner.

5 Sec. 3. 351. DEVELOPMENT OF COMPETITIVE MARKETS AND PROVISIONS
6 CONCERNING BELL OPERATING COMPANIES.

7 To accomplish the policies of the Legislature stated in
8 this Act, the commission shall, for this State,
9 implement the provisions of Section 251 et seq., (and
10 other applicable sections) of the Telecommunications Act
11 of 1996 and shall use that Act's provisions as standards
12 for achieving the policies and purposes of the
13 Legislature, including but not limited to Sec. 3. 350
14 above. The commission shall, on or prior to September 1,
15 1999 complete rule-making proceedings to implement the
16 development of competitive markets in a manner which
17 mirrors the provisions of the Telecommunications Act of
18 1996 in Sec. 251, et seq. Of that Act, including resale,
19 dialing parity, access to rights-of way, reciprocal
20 compensation, interconnection, unbundled access and
21 collocation; and to coordinate with
22 federal law and the Federal Communications Commission to
23 timely implement both the local exchange area provisions
24 above and the special provisions concerning Bell
25 Operating Companies prior to this provision of interLATA

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1 services, in Sec. 271, et seq. of that Act.

2 Sec. 3.352. UNIVERSAL SERVICE.

3 The commission shall establish procedures and principles
4 for the implementation and funding of universal service
5 obligations, including the infrastructure provisions of
6 Subtitle G.

7 Sec. 3.353. RULEMAKING TO IMPLEMENT THIS ACT, INCLUDING
8 SUBTITLES F, G

9 AND H. The legislature recognizes that the
10 implementation of the Telecommunications Act of 1996 will
11 take time and will result in changes and revisions in
12 past, current and future rules and orders of federal
13 bodies. To provide the commission with necessary
14 authority and flexibility to mirror that Act and its
15 implementation in New Mexico, the commission is
16 authorized and directed to adopt procedural and
17 substantive rules to implement the policies and
18 principles of this Act, including Subtitles F, G, and H
19 and to accurately mirror the federal Act and the rules
20 and orders of federal bodies, so that one consistent and
21 coordinated body of policies, implementations, pricing,
22 costs and requirements will be utilized by all
23 telecommunication utilities operating in both the federal
24 jurisdiction and the New Mexico jurisdiction. Further,
25 the commission is directed to coordinate and cooperate

1 with the Federal Communications Commission, the Federal-
2 State Joint Board On Universal Service and other federal-
3 state bodies in order to accomplish the policies and
4 principles of the federal Act and this Act in a
5 consistent, timely and coordinated manner.

6 Sec. 3.354. PRIVATE RIGHT OF ACTION.

7 (a) A person claiming that an act or practice of an
8 incumbent local exchange carrier, or any affiliate,
9 constitutes a violation of this Act, including
10 Subtitles F, G and H, may file a complaint with the
11 commission or bring suit for the recovery of
12 damages in the state district court, and the
13 incumbent local exchange carrier or any affiliate,
14 shall be liable if the incumbent local exchange
15 carrier or any affiliate does, or causes to be
16 done, any act, matter, or thing in violation of
17 this Act. The incumbent local exchange carrier
18 shall be liable to the person or persons injured
19 thereby for the full amount of damages sustained in
20 consequence of any violation of the provisions of
21 this subtitle, together with a reasonable counsel
22 or attorney's fees to be fixed by the court in
23 every case of recovery, which attorney's fees shall
24 be taxed and collected as part of the costs of the
25 case.

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(b) In addition to the provisions of Subsection (a) of this section, a person claiming that any act or practice of an incumbent local exchange carrier or any affiliate constitutes a violation of Subtitles F, G or H may make application to the commission for an order to cease and desist that violation or may make application in any state district court for an order enjoining those acts or practices or for an order compelling compliance with that requirement.

Sec. 3.355. ANTITRUST LAWS. Nothing in this subtitle may be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

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1 SUBTITLE I. TELECOMMUNICATIONS SERVICE ASSISTANCE PROGRAM;
2 TELECOMMUNICATIONS INFRASTRUCTURE FUND;
3 UNIVERSAL SERVICE FUND

4 Sec. 3.601. TEL-ASSISTANCE SERVICE. The commission shall
5 adopt and enforce rules
6 requiring each local exchange company to establish a
7 telecommunications service assistance program to be
8 called "tel-assistance service." This service is
9 established to provide eligible consumer with a reduction
10 in costs of telecommunications services.

11 Sec. 3.602. ELIGIBILITY FOR TEL-ASSISTANCE SERVICE; BURDEN OF
12 PROOF;
13 BILLING

14 (a) To be eligible for tel-assistance service, an
15 applicant must be a head of household and disabled
16 as determined by the State Human Services
17 Department and must have a household income at or
18 below the poverty level as determined by the United
19 State Office of Management and Budget and reported
20 annually in the Federal Register. The department,
21 in accordance with this subtitle and rules adopted
22 by the department for the program, shall develop
23 procedures for taking applications for
24 certification of eligibility and for determining
25 program eligibility. The burden of proving

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1 eligibility for tel-assistance service is on the
2 consumer applying for the service.

3 (b) Each six months the department shall provide a list
4 or lists of the names, addresses, and, if
5 applicable, telephone numbers of all persons
6 eligible for tel-assistance service to each local
7 exchange company. The local exchange company shall
8 determine from the list those consumers to whom the
9 company provides service and within 60 days after
10 receiving the list shall begin tel-assistance
11 billing for
12 eligible consumers. This billing shall continue
13 until the local exchange is notified by the
14 department that a consumer is no longer eligible to
15 receive tel-assistance service.

16 Sec. 3.603. TEL-ASSISTANCE SERVICES; BILLING; RATES.

17 (a) The local exchange company shall provide tel-
18 assistance service to all eligible consumers within
19 its certificated area in the form of a reduction on
20 each eligible consumer's telephone bill. The
21 reduction shall apply only to the following types
22 of service:

- 23 (1) residential flat rate basic local exchange
24 service;
25 (2) residential local exchange access service; and

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1 (3) residential local area calling usage, except
2 that the reduction for local area calling
3 usage shall be limited to an amount such that
4 together with the reduction for local exchange
5 access service the rate does not exceed the
6 comparable reduced flat rate for the service.

7 (b) No other local voice service may be provided to the
8 dwelling place of a tel-assistance consumer, nor
9 may single or party line optional extended area
10 service, optional extended area calling service,
11 foreign zone, or foreign exchange service be
12 provided to a tel-assistance consumer. Nothing in
13 this section shall prohibit a person otherwise
14 eligible to receive tel-assistance service from
15 obtaining and using telecommunications equipment
16 designed to aid such person in utilizing
17 telecommunications services.

18 (c) The reduction allowed by the telecommunications
19 service assistance program shall be 65 percent of
20 the applicable tariff rate for the service
21 provided.

22 Sec. 3. 604. STATEWIDE TELECOMMUNICATIONS RELAY ACCESS SERVICE
23 FOR
24 HEARING-IMPAIRED AND SPEECH-IMPAIRED.

25 (a) The commission shall adopt and enforce rules

1 establishing a statewide telecommunications relay
2 access service for the hearing-impaired and speech-
3 impaired using specialized communications equipment
4 such as telecommunications devices for the deaf
5 (TDD) and operator translations. The purpose of
6 this section is to provide for the uniform and
7 coordinated provision of the service on a statewide
8 basis by one telecommunications carrier.

- 9 (b) Commission rules relating to a statewide
10 telecommunications relay access service for the
11 hearing-impaired and speech-impaired shall provide
12 that:
- 13 (1) the service shall provide the hearing-impaired
14 and speech impaired with access to the
15 telecommunications network in New Mexico equal
16 to that provided other customers;
 - 17 (2) the service shall consist of the following:
 - 18 (A) switching and transmission of the call;
 - 19 (B) verbal and print translations by either
20 live or automated means between hearing-
21 impaired and speech-impaired individuals
22 who use TDD equipment or similar
23 automated devices and others who do not
24 have such equipment; and
 - 25 (C) other service enhancements proposed by

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- the carrier and approved by the
commission;
- (3) the calling or called party shall bear no charge for calls originating and terminating within the same local calling area;
 - (4) the calling or called party shall bear one-half of the total charges established by contract with the commission for intrastate interexchange calls;
 - (5) as specified in its contract with the commission, charges related to providing the service which are not borne by a calling or called party pursuant to Subdivisions (3) and (4) of this subsection shall be funded from the universal service fund;
 - (6) local exchange companies may not impose interexchange carrier access charges on calls which make use of this service and which originate and terminate in the same local calling area;
 - (7) local exchange companies shall provide billing and collection services in support of this service at just and reasonable rates; and
 - (8) if the commission orders a local exchange company to provide for a trial

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1 telecommunications relay access service for
2 the hearing-impaired or speech-impaired, all
3 pertinent costs and design information from
4 this trial shall be available to the general
5 public.

6 (c) The commission shall allow telecommunications
7 utilities to recover their universal service fund
8 assessment related to this service through a
9 surcharge which the utility may add to its
10 customers' bills. The commission shall specify how
11 the amount of the surcharge is to be determined by
12 each utility.
13 If a utility chooses to impose the surcharge, the
14 bill shall list the surcharge as the "universal
15 service fund surcharge."

16
17 (d) The commission shall set the appropriate
18 assessments for the funding of the service by all
19 telecommunications utilities. In setting the
20 appropriate assessment, the commission shall
21 consider the aggregate calling patterns of the
22 users of the service and all other factors found
23 appropriate and in the public interest by the
24 commission. The commission shall review the
25 assessments annually and adjust the assessments as

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1 found appropriate hereunder.

2 (e) The commission shall select the telecommunications
3 carrier which will provide the statewide
4 telecommunications relay access service for the
5 hearing-impaired and speech-impaired. In awarding
6 the contract for this service, the commission shall
7 make a written award of the contract to the offer
8 whose proposal is the most advantageous to the
9 state, considering price, the interests of the
10 hearing-impaired and speech-impaired community in
11 having access to a high quality and technologically
12 advanced telecommunications system, and all other
13 factor listed in the commission's request for
14 proposals. The commission shall consider each
15 proposal in a manner that does not disclose the
16 contents of the proposal to competing offers. The
17 commission's evaluation of the proposals shall
18 include:

- 19 (1) charges for the service;
- 20 (2) service enhancements proposed by the offerers;
- 21 (3) technological sophistication of the network
22 proposed by the offerers; and
- 23 (4) the proposed commencement date for the
24 service.

25 (f) The telecommunications carrier providing the

1 service shall be compensated for providing such
2 service at rates, terms, and conditions established
3 in its contract with the commission. The
4 compensation may include a return on the investment
5 required to provide the service and compensation
6 for unbillable and uncollectible calls placed
7 through the service, provided that compensation for
8 unbillable and uncollectible calls shall be subject
9 to a reasonable limitation as determined by the
10 commission.

- 11 (g) The commission shall appoint an advisory committee
12 to assist the commission in administering this
13 section, composed of the following persons:
- 14 (1) two deaf persons recommended by the Commission
15 for the Deaf and Hard of Hearing
 - 16 (2) one hearing-impaired person recommended by
17 Self-Help for the Hard of Hearing;
 - 18 (3) one hearing-impaired person recommended by the
19 American Association of Retired Persons;
 - 20 (4) one speech-impaired person and one speech-
21 impaired and hearing-impaired person.
 - 22 (6) two representatives of telecommunications
23 utilities, one representing a nonlocal
24 exchange utility and one representing a local
25 exchange company, chosen from a list of

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- 1 candidates provided by the Executive Director.
- 2 (7) two persons, at least one of whom is deaf,
- 3 with experience in providing relay services
- 4 (8) two public members recommended by
- 5 organizations representing consumers of
- 6 telecommunications services.
- 7 (h) The advisory committee shall monitor the
- 8 establishment, administration, and promotion of the
- 9 statewide telecommunications relay access service
- 10 and advise the commission in pursuing a service
- 11 which meets the needs of the hearing-impaired and
- 12 speech-impaired in communicating with other users
- 13 of telecommunications services. The terms of
- 14 office of each member of the advisory committee
- 15 shall be two years. A member whose term has
- 16 expired shall continue to serve until a qualified
- 17 replacement is appointed. The members of the
- 18 advisory shall serve without compensation but shall
- 19 be entitled to reimbursement at rates established
- 20 for state employees for travel and per diem
- 21 incurred in the performance of their official
- 22 duties. The commission shall reimburse members of
- 23 the advisory committee in accordance with this
- 24 subsection and shall provide clerical and staff
- 25 support to the advisory committee, including a

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1 secretary to record the committee meetings. The
2 commission's costs associated with the advisory
3 committee shall be reimbursed from the universal
4 service fund.

5 Sec. 3.605. DISTANCE LEARNING ACTIVITIES BY EDUCATIONAL
6 INSTITUTIONS

7 AND INFORMATION SHARING PROGRAMS BY LIBRARIES; REDUCED
8 RATES.

9 (a) The commission by rule shall require a dominant
10 carrier to file a tariff containing a reduced rate
11 for a telecommunications service the commission
12 finds is directly related to a distance learning
13 activity that is or could be conducted by an
14 educational institution in this state or an
15 information sharing program that is or could be
16 conducted by a library in this state.

- 17 (b) The commission rules shall specify:
- 18 (1) the telecommunications services that qualify
 - 19 under this section;
 - 20 (2) the process by which an educational
 - 21 institution or library qualifies for a reduced
 - 22 rate;
 - 23 (3) the date by which a dominant carrier shall
 - 24 file a tariff;
 - 25 (4) guidelines and criteria by which the services

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1 and reduced rates shall further the goals
2 stated in Subsection (d) of this section; and
3 (5) any other requirements, terms, and conditions
4 that the commission determines to be in the
5 public interest.

6 (c) A tariff filing by a dominant carrier under this
7 section:

- 8 (1) shall concern only the implementation of this
9 section;
10 (2) is not a rate change under Section 3.211 of
11 this Act; and
12 (3) does not affect any of the carriers other
13 rates or services.

14 (d) The services and reduced rates shall be designed
15 to:

- 16 (1) encourage the development and offering of
17 distance learning activities by educational
18 institutions or information sharing programs
19 of libraries;
20 (2) meet the distance learning needs identified by
21 the educational community and the information
22 sharing needs identified by libraries; and
23 (3) recover the long-run incremental costs of
24 providing the services, to the extent those
25 costs can be identified, so as to avoid

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1 subsidizing educational institutions or
2 libraries.

3 (e) The commission is not required to determine the
4 long-run incremental costs of providing a service
5 before approving a reduced rate for the service.
6 Until cost determination rules are developed and
7 the rates established under this section are
8 changed as necessary to ensure proper cost
9 recovery, the reduced rates established
10 by the commission shall be equal to 75 percent of
11 the otherwise applicable rate. After the
12 commission develops cost determination rules for
13 telecommunications services generally, it shall
14 ensure that a reduced rate approved under this
15 section recovers service-specific long-run
16 incremental costs and avoids subsidization.

17 (f) An educational institution, library, or dominant
18 carrier may at any time request the commission to:
19 (1) provide for a reduced rate for a service
20 directly related to a distance learning
21 activity or an information sharing program
22 that is not covered by commission rules;
23 (2) change a rate;
24 (3) amend a tariff; or
25 (4) amend a commission rule.

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- 1 (g) If the commission determines that a change
2 requested under Subsection (f) is appropriate, it
3 shall make the requested change.
- 4 (h) In this section:
- 5 (1) "Distance learning" means instruction,
6 learning, and training that is transmitted
7 from one site to one or more sites by
8 telecommunications services that are used by
9 an educational institution predominantly for
10 such instruction, learning, or training,
11 including video, data, voice, and electronic
12 information.
- 13 (2) "Educational institution" means and includes:
- 14 (A) accredited primary or secondary schools
15 owned or operated by state and local
16 government entities or private entities;
- 17 (B) institutions of higher education as
18 defined by law;
- 19 (C) private institutions of higher education
20 accredited by a recognized accrediting
21 agency as defined by law; .
- 22
- 23 (3) "Library" means a public library or regional
24 library system, or a library operated by an
25 institution of higher education or a school

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district.

Sec. 3. 606. TELECOMMUNICATIONS INFRASTRUCTURE FUND.

(a) In this section:

- (1) "Board" means the Telecommunications Infrastructure Fund Board.
- (2) "Fund" means the telecommunications infrastructure fund.
- (3) "Library" means a public library, or regional library system, or a library operated by an institution of higher education or a school district.
- (5) "School district" has the meaning assigned by the Education Department.
- (6) "Public, not-for-profit hospital" or "public not-for-profit health care facility" means a rural or regional hospital or entity such as a rural health clinic which is supported by local or regional tax levies or is, under federal definition, a certified not-for-profit health corporation.
- (7) "Telemedicine" means consultive, diagnostic, or other medical services delivered via telecommunications technologies to rural or underserved public, not-for-profit hospitals and primary health care facilities in

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1 collaboration with an academic health center
2 and associated teaching hospitals or tertiary
3 centers. Telemedicine includes, but is not
4 limited to, interactive vide consultation,
5 teleradiology, telepathology, and distance
6 education for working health care
7 professionals.

8
9 (8) "Commercial mobile service provider" means a
10 provider of commercial mobile service under
11 Sections 153(n) and 332(d), Communications Act
12 of 1934 (47 U.S.C. Section 151 et seq.),
13 Federal Communications Commission rules, and
14 the Omnibus Budget Reconciliation Act of 1993.

15 (b) The legislature finds that commercial mobile
16 service providers benefit from the public
17 telecommunications network by the ability to
18 originate and terminate calls that transverse
19 mobile and cellular network and that they will
20 benefit by virtue of the advancement of the public
21 telecommunications network through projects funded
22 under this section. Therefore, it is the policy of
23 this state that commercial
24 mobile service providers contribute an appropriate
25 amount to the telecommunications infrastructure

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1 fund.

2 (c) The board shall administer the fund, including the
3 two accounts in the fund. The board consists of
4 nine members. Three members are appointed by the
5 governor, three members are appointed by the
6 lieutenant governor, and three members are
7 appointed by the speaker of the house of
8 representatives. Members of the board serve for
9 staggered, six-year terms, with three members'
10 terms expiring on August 31 of each odd-numbered
11 year. The governor shall designate the presiding
12 officer of the board.

13 (d) The governor, the lieutenant governor, and the
14 speaker of the house of representatives, in making
15 their appointments to the board, shall attempt to
16 select members who are representative of, but not
17 limited to, urban and rural school districts,
18 institutions of higher education, libraries, and
19 the public. A person may not serve on the board if
20 the person is required to register as a lobbyist
21 under the law because of the person's activities
22 for compensation on behalf of a profession related
23 to the operation of the board.

24 (e) Members of the board serve without pay but are
25 entitled to reimbursement for their actual expenses

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1 incurred in attending meetings of the board or in
2 attending to other work of the board if approved by
3 the chairman of the board.

4 (f) Unless continued in existence by the legislature,
5 the advisory board shall expire on September 1,
6 2006.

7 (g) The board is authorized to employ any personnel as
8 reasonably necessary to perform duties delegated by
9 the board and the board may also enter into
10 contracts as are necessary with state agencies or
11 private entities to perform its duties.

12 (h) The board may appoint any committees as it
13 determines may assist in performing its duties
14 under this section.

15 (i) The board shall prepare an annual report detailing
16 the revenues deposited to the credit of the fund,
17 including each account, and summarizing the grants
18 and loans made from each account. Not later than
19 December 15 of each year, the board shall submit
20 the report for the preceding year to the governor
21 and to each standing committee in the senate and
22 house of representatives that has jurisdiction over
23 public or higher education.

24 (j) The fund is composed of the telecommunications
25 utilities account and the commercial mobile service

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1 providers account. The telecommunications
2 utilities account is financed by an annual
3 assessment on all telecommunications utilities
4 doing business in this state. Each
5 telecommunications utility shall pay the annual
6 assessment in accordance with the ratio that the
7 annual taxable telecommunications receipts reported
8 by that telecommunications utility to the State
9 Taxation and Revenue Department ("TRD") bears to
10 the total annual taxable telecommunications
11 receipts reported by all telecommunications
12 utilities to TRD.

13 (k) The commercial mobile service providers account is
14 financed by an annual assessment on all commercial
15 mobile service providers doing business in this
16 state. Each commercial mobile service provider
17 shall pay the annual assessment in accordance with
18 the ratio that the annual taxable
19 telecommunications receipts
20 reported by that provider to TRD bears to the
21 total annual taxable telecommunications receipts
22 reported by all commercial mobile service providers
23 to TRD.

24 (l) For the fiscal year beginning in the calendary year
25 1999, and for the nine fiscal years immediately

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1 following that year, for a total of 10 years, the
2 State Taxation and Revenue Department shall assess
3 and collect a total annual amount of \$75 million
4 from telecommunications utilities and a total
5 annual amount of \$75 million from commercial mobile
6 service providers. The amounts assessed against
7 both the telecommunications utilities and the
8 commercial mobile service providers shall be
9 assessed and collected in each year without respect
10 to whether all of the funds previously collected
11 and deposited in either or both accounts have been
12 disbursed or spent due to lack of demand or
13 otherwise.

14 (m) The TRD may require telecommunications utilities
15 and commercial mobile service providers to provide
16 any reports and information as are needed to
17 fulfill the duties of the TRD provided by this
18 section. Any information provided to the TRD by a
19 telecommunications utility or commercial service
20 provider under this section is confidential and
21 exempt from disclosure under the Public Records
22 Act.

23 (n) All amounts collected by the TRD from
24 telecommunications utilities under Subsection (l)
25 of this section shall be deposited to the credit of

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1 the telecommunications utilities account in the
2 telecommunications infrastructure fund in the state
3 treasury. All amounts collected by the TRD from
4 commercial mobile service providers under
5 Subsection (1) of this section shall be deposited
6 to

7 the credit of the commercial mobile service
8 providers account in the telecommunications
9 infrastructure fund in the state treasury. Money
10 in the fund may be appropriated only for a use
11 consistent with the purposes of this section.

12 Sections 403.094 and 403.095, Government Code, do
13 not apply to the fund or either account.

14 (o) From funds appropriated to the board, the TRD shall
15 issue warrants as requested by the board in
16 accordance with the purpose of this section,
17 including warrants to grantees of the board in
18 amounts certified by the board to the TRD.

19 (p) In addition to any appropriated funds, the board
20 may accept gifts, grants, and donations and use
21 them for the purposes of this section.

22 (q) The board shall use money in the telecommunications
23 utilities account to award grants and loans in
24 accordance with this section to fund equipment
25 purchases, including computers, printers, computer

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1 labs, and video equipment, for public schools and
2 for intracampus and intercampus wiring to enable
3 those public schools to use the equipment. The
4 board shall use money in the commercial mobile
5 service providers account for any purpose
6 authorized by this section, including equipment
7
8 purchases, wiring, material, program development,
9 training, installation costs, or any statewide
10 telecommunications network.

11 (r) Subject to the limitations prescribed by Subsection
12 (q) of this section, the board may award grants to
13 projects and proposals that:

- 14 (1) provide equipment and infrastructure needed
15 for distance learning, information sharing
16 programs of libraries, and telemedicine
17 services;
- 18 (2) develop and implement the initial or
19 prototypical delivery of courses and other
20 distance learning material;
- 21 (3) train teachers, faculty, librarians, or
22 technicians in the use of distance learning or
23 information sharing materials and equipment;
- 24 (4) develop curricula and instructional material
25 especially suited for delivery by

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- 1 telecommunications;
- 2 (5) provide electronic information; or
- 3 (6) establish or carry out information sharing
- 4 programs.
- 5 (s) Subject to the limitations prescribed by Subsection
- 6 (q) of this section, the board may award loans to
- 7 projects and proposals to acquire equipment needed
- 8 for distance learning and telemedicine projects.
- 9 (t) In awarding grants and loans in accordance with
- 10 this section, the board shall give priority to
- 11 projects and proposals that:
- 12 (1) represent collaborative efforts involving
- 13 multiple schools, universities, or libraries;
- 14 (2) contribute matching funds from other sources;
- 15 (3) show promise of becoming self-sustaining;
- 16 (4) help users of information learn new ways to
- 17 acquire and use information through
- 18 telecommunications;
- 19 (5) extend specific educational information and
- 20 knowledge services to groups not previously
- 21 served, especially those in rural and remote
- 22 areas;
- 23 (6) result in more efficient of effective learning
- 24 than through conventional teaching;
- 25 (7) improve the effectiveness and efficiency of

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1 health care delivery; or
2 (8) take advantage of distance learning
3 opportunities in rural and urban school
4 districts with disproportionate numbers of at-
5 risk youths or with high dropout rates.

6 (u) In distributing funds to public schools, the board
7 shall take into account the relative property
8 wealth per student of the recipient school
9 districts and recognize the unique needs of rural
10 communities.

11 Sec. 3.607. RECOVERY OF LOST REVENUES. A local exchange
12 company is entitled to
13 recover the lost revenue, if any, resulting solely from
14 the provision of tel-assistance service from the
15 universal service fund, the establishment of which is
16 provided for by this Act.

17 Sec. 3.608. UNIVERSAL SERVICE FUND.
18 (a) The commission shall adopt and enforce rules
19 requiring local exchange companies to establish a
20 universal service fund to assist local exchange
21 companies in providing basic local
22 telecommunications service at reasonable rates in
23 high cost rural areas to reimburse local exchange
24 companies for revenues lost as a result of
25 providing tel-assistance service under this Act, to

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1 reimburse the telecommunications carrier providing
2 the statewide telecommunications relay access
3 service for the hearing-impaired and speech-
4 impaired as authorized in Section 3.604 of this
5 Act, and to reimburse the Human Services Department
6 and the commission for costs incurred in
7 implementing the provisions of this subtitle.

- 8 (b) (1) For local exchange companies serving fewer
9 than 40,000 access lines, in addition to the
10 authority described by Subsection (a) of this
11 section, the commission may adopt any
12 mechanisms necessary to maintain reasonable
13 rates for local exchange telephone service and
14 shall establish rules that would expand the
15 universal service fund in the circumstances
16 prescribed by this subsection.
- 17 (2) In the event of a commission order, rule, or
18 policy, the effect of which is to reduce the
19 amount of the high cost assistance fund,
20 except an order entered in an individual
21 company revenue requirements proceeding, the
22 commission shall implement a mechanism through
23 the universal service fund to replace the
24 reasonably projected reduction in revenues
25 caused by that regulatory action.

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(3) In the event of a Federal Communications Commission order, rule, or policy, the effect of which is to change the federal universal service fund revenues of a local exchange company or change costs or revenues assigned to the intrastate jurisdiction, the commission shall implement a mechanism, through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, to replace the reasonably projected change in revenues caused by the regulatory action.

(4) In the event of any other governmental agency issuing an order, rule, or policy, the effect of which is to increase costs or decrease revenues of the intrastate jurisdiction, the commission shall implement a mechanism through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, to replace the reasonably projected increase in costs or decrease in revenues caused by that regulatory action.

(5) A revenue requirement showing is not required

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1 with respect to disbursements from the
2 universal service fund under Subsection (a) or
3 9b) of this section. Those disbursements
4 shall be implemented promptly and efficiently
5 so that telecommunications providers and local
6 exchange companies do not experience
7 unnecessary cash flow changes as a result of
8 these changes in governmental policy.

9 (c) The universal service fund shall be funded by a
10 statewide uniform charge, at rates and on services
11 determined by the commission, payable by all
12 telecommunications providers that have access to
13 the customer base. In establishing the uniform
14 level of the charge and the services to which it
15 will apply, the commission may not make or grant an
16 unreasonable preference or advantage to a
17 telecommunications provider or subject a
18 telecommunications provider to unreasonable
19 prejudice or disadvantage. The charge shall be
20 paid in accordance with procedures approved by the
21 commission.

22
23
24 (d) The commission shall:

25 (1) establish, in a manner that assures reasonable

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rates for basic local telecommunications service, eligibility criteria and review procedures, including a method for administrative review, it finds necessary for funding of and distribution from the universal service fund;

(2) determine which local exchange companies meet the eligibility criteria, which, at a minimum, includes the requirement to offer service to every consumer within its certificated area and render continuous and adequate service within the area or areas, in compliance with the commission's quality of service requirements.

(3) determine the amount of and approve a procedure for reimbursement to local exchange companies of revenue lost in providing telephone assistance service under this Act;

(4) prescribe and collect fees from the universal service fund necessary to recover the costs the Human Services Department and the commission incurred in implementing and administering the provisions of this subtitle; and

(5) approve procedures for the collection and disbursement of the revenues of the universal

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service fund.

(e) The commission shall adopt rules for the implementation and administration of the universal service fund.

(f) The commission may do all things necessary and convenient to implement and administer the universal service fund, including require local exchange companies and other telecommunications providers to provide any reports and information needed to assess contributions to the fund. Competitively-sensitive information shall not be disclosed by the commission.

TITLE IV. NATURAL GAS, WATER AND WASTE WATER UTILITIES

[Note: This material presumably will be provided, in one or more separate bills

by the interim committee on Water, Utilities & Natural Resources (Rep. Michael Sanchez, Chairman) in one or more separate bills].

TITLE V. OTHER REGULATED ENTITIES

SUBTITLE A. STATUTORY ORGANIZATION

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1 Sec. 5.001. PURPOSE. Unlike the public utility industries in
2 Titles II, III and IV of this Act, the

3 industries in this Title V generally do not need the
4 degree or extent of regulation necessary for Title II-IV
5 public utilities and, further, have not been subject to
6 major changes in the nature and developments of their
7 respective industries. Accordingly, it is the
8 legislature's purpose in this Title V to provide by
9 amendments for the organization and clarification of
10 existing legislation, so that it may properly but with
11 this Act, while re-adopting that existing substantive
12 legislation applicable to each industry and entity
13 covered by this Title. Only additions or deletions in
14 existing legislation will be shown. At the end of the
15 material with additions and deletions, the remainder of
16 the existing legislation shall be the same as it now is
17 contained in the New Mexico Statutes Annotated, 1978
18 [NMSA 1978].

19
20 SUBTITLE B. STATE FIRE MARSHAL AND FIREFIGHTERS TRAINING
21 ACADEMY.

22 Sec. 5.002. DEPARTMENT ESTABLISHED. There is created in the
23 executive branch the

24 "Department of Public Safety". The department shall be
25 a cabinet department and shall include the following

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1 divisions:

- 2 A. The New Mexico State Police Division;
3 B. The Special Investigations Division;
4 C. The Training and Recruiting Division;
5 D. The Technical and Emergency Support Division;

6 [and]

- 7 E. The Administrative Services Division; and
8 F. The State Fire Marshal Division, including the
9 firefighters training academy, which shall be
10 a bureau of the state fire marshal division.”

11 Section 59A-52-1 NMSA 1978 (being Laws 1984, Chapter 127,
12 Section 947) is amended to read:

13 “59A-52-1. ~~[STATE FIRE BOARD AND POSITION OF]~~ STATE FIRE
14 MARSHAL ~~[CONTINUED]~~ CREATED. -- ~~[For purposes of fire prevention~~
15 ~~and investigation, and reduction of fire insurance premium~~
16 ~~rates, the state “fire board” is hereby continued. The~~
17 ~~membership thereof shall be the members of the state insurance~~
18 ~~board, but they shall receive no extra or additional~~
19 ~~compensation for acting in that capacity.]~~ The position of
20 “state fire marshal” is ~~[hereby continued. The state fire~~
21 ~~board shall appoint, fix the compensation of, and have power~~
22 ~~to remove, the state fire marshal. [The marshal shall serve as~~
23 ~~the executive secretary for the board]~~ created in the
24 department of public safety.”

25 Section 59A-52-2 NMSA 1978 (being Laws 1984, Chapter 127,

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1 Section 948) is amended to read:

2 "59A-52-2. FIRE MARSHAL TO ADMINISTER ARTICLE. --The
3 state fire marshal shall administer the provisions of [~~this~~
4 ~~article under the supervision of the state fire board~~] Chapter
5 59A, Article 52 NMSA 1978."

6 Section 59A-52-3 NMSA 1978 (being Laws 1984, Chapter 127,
7 Section 949) is amended to read:

8 "59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER
9 EMPLOYEES--QUALIFICATIONS OF DEPUTY. --The state fire marshal
10 [~~shall have the power to~~] may, with the approval of the
11 secretary of public safety, appoint or remove a deputy state
12 fire marshal and other employees to assist in the execution of
13 the marshal's duties [~~and to set their compensation, subject~~
14 ~~to state laws and regulations concerning classification and~~
15 ~~compensation of state employees~~]; provided, however, that the
16 state fire marshal and any deputy state fire marshal appointed
17 by the state fire marshal [~~as herein provided~~] shall be
18 [~~persons~~] experienced in fire prevention and fire fighting and
19 [~~who~~] have completed a course of training by actual attendance
20 at a fire-training school."

21 Section 59A-52-21 NMSA 1978 (being Laws 1984, Chapter
22 127, Section 967) is amended to read:

23 "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND
24 MODIFICATIONS. --Any person aggrieved by any order of the state
25 fire marshal, his deputy or authorized officer or his

Underscored material = new
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1 designated agent may appeal to the [~~state fire board~~]
2 secretary of public safety within ten [~~(10)~~] days from the
3 date of the service of such order. The [~~state fire board~~]
4 secretary of public safety shall hear such party [~~or parties~~]
5 within twenty [~~(20)~~] days after receipt of an appeal request
6 and shall give not less than ten [~~(10)~~] days' written notice
7 of the hearing. Within fifteen [~~(15)~~] days after such
8 hearing, the [~~state fire board~~] secretary shall file [~~its~~] his
9 decision [~~thereon~~] and, unless

10
11 by [~~its~~] his authority the order is revoked or modified, it
12 shall be complied with within the time fixed in the decision,
13 with such time to be not less than thirty [~~(30)~~] days.

14 Section 59A-52-23 NMSA 1978 (being Laws 1984, Chapter
15 127, Section 969) is amended to read:

16 "59A-52-23. ENFORCEMENT OF CEASE AND DESIST ORDERS. --
17 After expiration of time for an administrative appeal, and if
18 no such appeal has been taken, the state fire marshal may
19 commence an action in the district court for Santa Fe county
20 to enforce the cease and desist order by injunction or other
21 appropriate remedy as the district court may adjudge. The
22 [~~state fire board~~] secretary of public safety may likewise
23 commence an action in the district court for Santa Fe county
24 to enforce [~~its~~] his decision rendered on appeal from the
25 cease and desist order of the state fire marshal."

Underscored material = new
[bracketed material] = delete

1 Section 59A-53-6 NMSA 1978 (being Laws 1984, Chapter 127,
2 Section 977, as amended) is amended to read:

3 "59A-53-6. APPEAL AND REVIEW OF DETERMINATION. --The
4 state fire marshal shall promptly notify each incorporated
5 city, town, village and county fire district affected of his
6 determination of needs, and [~~any~~] an incorporated city, town,
7 village or county fire district may appeal from the
8 determination of the marshal to the [~~state fire board~~]
9 secretary of public safety within ten days after the
10 determination of needs. The [~~state insurance board~~] secretary
11 shall review the determination of the state fire marshal in
12 such informal and summary proceedings as [~~it may deem~~] he
13 deems proper and shall certify to the state treasurer
14 annually, on or before the last day of June, the results of
15 all appeals from the determinations of the state fire marshal.
16 The
17
18 certification by the [~~state fire board~~] secretary, or by the
19 marshal if no appeal is taken, shall be final and binding on
20 all concerned and not subject to any further review."

21 Section 59A-53-7 NMSA 1978 (being Laws 1984, Chapter 127,
22 Section 978, as amended) is amended to read:

23 "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND. --
24 A. Annually on or before the last day of July, the
25 state treasurer shall distribute from the money in the fire

Underscored material = new
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1 protection fund, to each incorporated municipality and to each
2 county fire district, the amount [~~as~~] the state fire marshal
3 or the [~~state fire board~~] secretary of public safety, as the
4 case may be [~~shall have~~] has certified to him. Payment shall
5 be made to the treasurer of any incorporated municipality and
6 to the county treasurer of the county in which any county fire
7 district is located for credit to the county fire district.

8 B. The state treasurer is authorized to redirect a
9 distribution to the New Mexico finance authority in the amount
10 [~~as~~] the state fire marshal or the [~~state fire board~~]
11 secretary, as the case may be, [~~shall have~~] has certified to
12 him pursuant to an ordinance or a resolution passed by the
13 municipality or county and a written agreement of the
14 municipality or county in which any county fire district is
15 located and the New Mexico finance authority.”

16 Sec. 5.003. CORPORATE REPORTS ACT; BUSINESS DEVELOPMENT

17 CORPORATION

18 ACT; NONPROFIT CORPORATION ACT; BUSINESS CORPORATION ACT;
19 LIMITED LIABILITY COMPANY ACT. Section 53-5-1 NMSA 1978
20 (being laws 1959, Chapter 181, Section 1) is amended to
21 read:

22 “53-5-1. SHORT TITLE -- [~~This act~~] Chapter 53, Article 5
23 NMSA 1978 may be cited as the “Corporate Reports Act.”

24 Section 25. Section 53-7-18 NMSA 1978 (being Laws 1983,
25 Chapter 312, Section 1) is amended to read:

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Underscored material = new
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1 “53-7-18. SHORT TITLE. -- [~~This act~~] Sections 53-7-18
2 through 53-7-46 NMSA 1978 may be cited as the ‘Business
3 Development Corporation Act’.”

4 Section 53-8-1 NMSA 1978 being Laws 1975, Chapter 217,
5 Section 1, as amended) is amended to read:

6 “53-8-1. SHORT TITLE. -- [~~Article 14 of Chapter 51, NMSA~~
7 ~~1953~~] Chapter 53, Article 8 NMSA 1978 may be cited as the
8 “Nonprofit Corporation Act’.”

9 Section 53-8-2 NMSA 1978 (being Laws 1975, Chapter 217,
10 Section 2, as amended) is amended to read:

11 “53-8-2. DEFINITIONS. -- As used in the Nonprofit
12 Corporation Act, unless the context otherwise requires [~~the~~
13 ~~term~~]:

14 A. “corporation” or “domestic corporation” means
15 a nonprofit corporation subject to the provisions of the
16 Nonprofit Corporation Act, except a foreign corporation;

17 B. “foreign corporation” means a nonprofit
18 corporation organized under laws other than the laws of New
19 Mexico for a purpose [~~or purposes~~] for which a corporation may
20 be organized under the Nonprofit Corporation Act;

21 C. “nonprofit corporation” means a corporation no part
22 of the income or profit of which is distributable to its
23 members, directors or officers;

24 D. “articles of incorporation” means the original or
25 restated articles of incorporation or articles of

Underscored material = new
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1 consolidation and all amendments thereto, including articles
2 of merger;

3

4 E. "bylaws" means the code [~~or code~~] of rules adopted
5 for the regulation or management of the affairs of the
6 corporation, irrespective of the name [~~or names~~] by which such
7 rules are designated;

8 F. "member" means one having membership rights in a
9 corporation in accordance with the provision of its articles
10 of incorporation or bylaws;

11 G. "Board of directors" means the group of persons
12 vested with the management of the affairs of the corporation,
13 irrespective of the name by which such group is designated;

14 H. "insolvent" means inability of a corporation to pay
15 its debts as they become due in the usual course of its
16 affairs;

17 I. "commission" or "corporation commission" means the
18 [~~state corporation~~] public regulation commission or its
19 delegate;

20 J. "address" means:

21 (1) the mailing address and the street address, if
22 within a municipality; or

23 (2) the mailing address and a rural route number
24 and box number, if any, or the geographical location, using
25 well-known landmarks, if outside a municipality;

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1 K. "duplicate original" means a document [which] that
2 is signed or executed in duplicate;

3 L. "delivery" means:
4 (1) if a personally served, the date documentation
5 is received by the [~~commission's corporation department~~]
6 corporations bureau of the commission and

7 (2) if mailed to the commission, the date of the
8 postmark plus three days, upon proof thereof by the party
9 delivering the documentation; and

10 M "person" includes individuals, partnerships,
11 corporations and other associations."

12 Section 53-11-1 NMSA 1978 (being Laws 1967, Chapter 81,
13 Section 1, as amended) is amended to read:

14 "53-11-1. SHORT TITLE. -- Sections [~~51-24-1 through 51-31-~~
15 ~~11 NMSA 1953~~] 53-11-1 through 53-18-12 NMSA 1978 is the
16 general corporation law of New Mexico and may be cited as the
17 'Business Corporation Act'."

18 Section 53-11-2 NMSA 1978 (being Laws 1967, Chapter 81,
19 Section 2, as amended) is amended to read:

20 "53-11-2. DEFINITIONS. -- As used in the Business
21 Corporation Act, unless the text otherwise requires:

22 A. "corporation" or "domestic corporation" means
23 a corporation for profit subject to the provisions of the
24 Business Corporation Act, except a foreign corporation;

25 B. "foreign corporation" means a corporation for

Underscored material = new
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1 profit organized under laws other than the laws of this state
2 for a purpose or purposes for which a corporation may be
3 organized under the Business Corporation Act;

4 C. "articles of incorporation" means the original
5 or restated articles of incorporation or articles of
6 consolidation and all amendments thereto, including articles
7 of merger;

8 D. "shares" means the units into which the
9 proprietary interests in a corporation are divided:

10 E. "subscriber" means one who subscribes for
11 shares in a corporation, whether before or after
12 incorporation;

13
14 F. "shareholder" means one who is a holder of
15 record of shares in a corporation;

16 G. "authorized shares" means the shares of all
17 classes which the corporation is authorized to issue;

18 H. "annual report" means the corporate report
19 required by the Corporate Reports Act;

20 I. "distribution" means a direct or indirect
21 transfer of money or other property except its own shares) or
22 incurrence of indebtedness, by a corporation to or for the
23 benefit of any of its shareholders in respect of any of its
24 shares, whether by dividend or by purchase redemption or other
25 acquisition of its shares, or otherwise;

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- J. "franchise tax" means the franchise tax imposed by the Corporate Income and Franchise Tax Act;
- K. "fees" means the fees imposed by Section 53-2-1 NMSA 1978;
- L. "commission" means the [~~state corporation~~] public regulation commission or its delegates;
- M. "address" means:
 - (1) the mailing address and the street address, if within a municipality; or
 - (2) the mailing address and a rural route number and box number, if any, or the geographical location, using well-known landmarks, if outside a municipality;
- N. "duplicate original" means a document [~~which~~] that is signed or executed in duplicate;
- O. "delivery" means:
 - (1) if personally served, the date on which the documentation is received by the [~~commissions corporation department~~] corporations bureau of the commission; and
 - (2) if mailed, the date of the postmark plus three days, upon proof thereof by the party delivering the documentation; and
- P. "person" includes individuals, partnerships, corporations and other associations."

Section 53-19-1 NMSA 1978 (being Laws 1993, Chapter 280, Section 1) is amended to read:

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[bracketed material] = delete

1 “53-19-1. SHORT TITLE. -- [~~Sections 1 through 74 of this~~
2 ~~act]~~ Chapter 53, Article 19 NMSA 1978 may be cited as the
3 “Limited Liability Company Act”.”

4 Section 53-19-2 NMSA 1978 (being Laws 1993, Chapter 280,
5 Section 2) is amended to read:

6 “53-19-2. DEFINITIONS. -- As used in the Limited Liability
7 Company Act:

8 A. “articles of organization” means the original
9 or restated articles filed pursuant to the Limited Liability
10 Company Act and any amendments to those articles, including
11 articles of merger or consolidations;

12 B. “corporation” means an organization
13 incorporated under the laws of New Mexico or a foreign
14 corporation;

15 C. “commission means the [~~state corporation]~~
16 public regulation commission or its designee;

17 D. “court” means a court having jurisdiction in
18 the case;

19 E. “event of disassociation” means an event that
20 causes a person to cease to be a member of a limited liability
21 company;

22 F. “foreign corporation” means a corporation that
23 is organized under the laws of another state or a foreign
24 country;

25 G. “foreign limited liability company” means [an

Underscored material = new
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1 ~~entity]~~ a person that is:

2 (1) an unincorporated association;

3 (2) organized under the laws of another
4 state or foreign country;

5 (3) organized under a statute pursuant to
6 which an association may be formed that affords to each of its
7 members limited liability with respect to the liabilities of
8 the [~~entity]~~ person; and

9 (4) is not required to be registered or
10 organized under the laws of New Mexico other than the Limited
11 Liability Company Act;

12 H. “foreign limited partnership” means a limited
13 partnership formed under the laws of another state or a
14 foreign country;

15 I. “limited liability company” or “domestic
16 limited liability company” means an organization formed
17 pursuant to the provisions of the Limited Liability Company
18 Act;

19 J. “limited liability company interest” means a
20 member’s or assignee’s right to receive distributions and a
21 return of capital from the limited liability company. A
22 member’s or assignee’s limited liability company interest does
23 not include rights the member or assignee has on account of
24 other matters, such as a right to receive accrued salary for
25 services the member or

Underscored material = new
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1 assignee rendered to, repayment of a loan the member or
2 assignee made to or indemnification by the limited liability
3 company;

4 K. "limited partnership" means a limited
5 partnership under the laws of New Mexico or a foreign limited
6 partnership;

7 L. "manager" means with respect to a limited
8 liability company that has included a statement in its
9 articles of organization that it is to be managed by a manager
10 [~~or managers~~], the person [~~or persons~~] designated as
11 [~~managers~~] manager in accordance with the articles of
12 organization or an operating agreement;

13 M. "member" means a person who has been admitted
14 to membership in a limited liability company and who has not
15 dissociated from that company;

16 N. "membership interest" or "interest" means a
17 member's limited liability company interest and his rights to
18 participate in management and control of the limited liability
19 company;

20 O. "operating agreement" means a written
21 agreement providing for the conduct of the business and
22 affairs of a limited liability company and that agreement as
23 amended in writing;

24 P. "person" means an individual, a general
25 partnership, a limited partnership, a domestic or foreign

Underscored material = new
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1 limited liability company, a trust, an estate, an association,
2 a corporation or any other legal entity; and

3 Q. "state" means a state, territory or possession
4 of the United States, the District of Columbia or the
5 commonwealth of Puerto Rico."

6
7 SUBTITLE C. CHANGE OF NAME OF CORPORATION COMMISSION.

8 Sec. 5.004.

9 Section 59A-1-4 NMSA 1978 (being Laws 1984, Chapter 127,
10 Section 4, is amended to read:

11 "59A-1-4. [~~CORPORATION~~] COMMISSION. -- "Corporation
12 commission" or "commission" means the [~~state corporation~~]
13 public regulation commission [~~of New Mexico~~]."

14
15 SUBTITLE D. INSURANCE DIVISION

16 Sec. 5.005

17 Sec. 59A-1-7 NMSA 1978 (being Laws 1984, Chapter 127,
18 Section 7 is amended to read:

19 "59A-1-7. INSURANCE DEPARTMENT. -- "Insurance department",
20 "insurance division" or "division" means the [~~department of~~]
21 insurance division of the [~~corporation~~] commission."

22 Section 59A-112 NMSA 1978 (being Laws 1984, Chapter 127,
23 Section 12) is amended to read:

24 "59A-1-12. SUPERINTENDENT. -- "superintendent" means the
25 superintendent of [~~the~~] insurance [~~department, as designated~~

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1 ~~as such by the corporation commission~~ or the superintendent's
2 duly authorized representative acting in official capacity."

3 Section 59A-2-1 NMSA 1978 (being Laws 1984, Chapter 127,
4 Section 19) is amended to read:

5 "59A-2-1. INSURANCE [~~DEPARTMENT CONTINUED--DIVISION OF~~
6 ~~POWERS~~] DIVISION CREATED. --

7 A. The [~~department of~~] insurance [~~is continued~~]
8 division is created within the [~~corporation~~] commission.

9 B. All powers relating to state supervision of
10 insurance, insurance rates and rate practices, together with
11 collection of insurance licenses, taxes or fees, and all
12 records pertaining to such supervision [~~shall continue to be~~
13 ~~and remain~~] are under control of the [~~corporation~~] commission
14 through [~~its insurance department; except that all powers~~
15 ~~relating to state control and supervision of insurance rates~~
16 ~~and rate practices, as provided for in Article 17 of the~~
17 ~~Insurance Code and all records pertaining thereto shall~~
18 ~~continue to be and remain under exclusive control of the state~~
19 ~~insurance board~~] the division."

20 Section 59A-2-2 NMSA 1978 (being Laws 1984, Chapter 127,
21 Section 20) is amended to read:

22 "59A-2-2. SUPERINTENDENT [~~DEPARTMENT CHIEF~~]-
23 ~~APPOINTMENT--REMOVAL.~~ -- The superintendent of insurance shall
24 be chief officer of the insurance [~~department~~] division. The
25 superintendent shall be appointed and may be removed for cause

Underscored material = new
[bracketed material] = delete

1 at any time by the [~~corporation~~] commission.”

2 Section 59A-2-4 NMSA 1978 (being Laws 1984, Chapter 127,
3 Section 22, as amended) is amended to read:

4 “59A-2-4. STAFF. -- [A.] With the [~~corporation~~
5 ~~commission's~~] chief of staff's approval, the superintendent
6 may designate an employee of the insurance [~~department~~]
7 division as chief deputy superintendent who shall be acting
8 superintendent when the office of superintendent is vacant or
9 the superintendent is unable to perform the duties of that
10 office because of mental or physical disability.

11 [~~B. With the corporation commission's approval,~~
12 ~~the superintendent may employ such other administrative and~~
13 ~~clerical assistants and such examiners and other personnel as~~
14 ~~may be required for insurance department operations.~~

15 ~~----- C. Subject to applicable state personnel laws,~~
16 ~~the corporation commission may with or without the~~
17 ~~superintendent's recommendation, remove any deputy, assistant~~
18 ~~or other insurance department personnel.~~

19 ~~----- D. With the corporation commission's approval and~~
20 ~~subject to applicable state personnel laws, the superintendent~~
21 ~~may make reasonable rules and regulations regarding staff~~
22 ~~development through job-related college courses, professional~~
23 ~~programs or other training programs that are commensurate with~~
24 ~~the duties and responsibilities of all professional and other~~
25 ~~personnel whose positions require specialized knowledge of~~

Underscored material = new
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1 insurance.]}

2 Section 59A-4-20 NMSA 1978 (being Laws 1984, Chapter 127,
3 Section 67, as amended) is amended to read:

4 "59A-4-20. APPEAL TO COMMISSION- -APPEAL TO COURT- -

5 A. A party may appeal from a final order of the
6 superintendent. [~~made after an informal hearing or an~~
7 ~~administrative hearing, and the court shall try the matter de~~
8 ~~novo; provided that if an administrative hearing was held, the~~
9 ~~court may, in its discretion, limit its review to that~~
10 ~~provided in Section 12-8-22 NMSA 1978, in which case Sections~~
11 ~~12-8-17 through 12-8-22 NMSA 1978 shall apply.~~

12 _____ B. ~~The appeal shall be taken within sixty days~~
13 ~~after receipt; by the party appealing, of a copy of the~~
14 ~~decision from the review of the superintendent's order by the~~
15 ~~corporation commission or insurance board, if such review is~~
16 ~~sought. If no such review is sought, the appeal shall be~~
17 ~~taken within sixty days after receipt of a copy of the~~
18 ~~superintendent's order by the party appealing.~~

19 _____ C. ~~The appeal shall be taken to the district court~~
20 ~~for Santa Fe county in the same manner and under the same~~
21 ~~rules of pleading, practice and procedure in civil actions as~~
22 ~~apply to appeals to court from actions of state administrative~~
23 ~~officers or agencies in general.~~

24 _____ D. ~~Filing of an appeal pursuant to this section~~
25 ~~shall not stay the effectiveness of the order on hearing~~

Underscored material = new
[bracketed material] = delete

1 ~~appealed from unless, after notice and opportunity given the~~
2 ~~parties to be heard and for good cause shown, the court~~
3 ~~determines that a stay should be granted and would not be~~
4 ~~policyholders, stockholders, creditors or to the public.~~

5 ~~_____ E. The district court may affirm, reinstate,~~
6 ~~modify or vacate the order appealed from or remand for~~
7 ~~rehearing by the superintendent as to designated matters~~
8 ~~involved in the hearing. The judgement of the district court~~
9 ~~may be appealed to the court of appeals or to the supreme~~
10 ~~court of New Mexico.~~

11 ~~_____ F. This section shall not apply as to matters~~
12 ~~arising under Chapter 59A, Article 17 NMSA 1978] to the~~
13 ~~commission.~~

14 B. A party in interest being aggrieved by a final
15 order or determination of the commission pursuant to the
16 provisions of the Insurance Code may appeal to the supreme
17 court.

18 C. The appeal shall be on the record of the
19 hearing before the commission and shall be governed by the
20 appellate rules applicable to administrative appeals. The
21 supreme court shall affirm the commission's order unless it
22 is:

23 (1) arbitrary, capricious or an abuse of
24 discretion;

25 (2) not supported by substantial evidence in

Underscored material = new
[bracketed material] = delete

1 the record; or

2 (3) otherwise not in accordance with law.”

3 Section 59A-29-6 NMSA 1978 (being Laws 1985, Chapter 61,
4 Section 6, as amended) is amended to read:

5 “59A-29-6. APPEALS-- JUDICIAL REVIEW [~~DE-NOVO~~]. -- Any
6 person aggrieved by any action or decision of the
7 administrators of the FAIR plan or the underwriting
8 association or of any insurer as a result of its participation
9 therein may appeal to the superintendent [~~of insurance~~] within
10 thirty days from the date of the action or the decision. The
11 superintendent [~~of insurance~~] shall, after hearing held upon
12 thirty days’ written notice, issue an order approving the
13 action or decision or disapproving the action or decision with
14 respect to the matter which is the subject of an appeal. All
15 final orders and decisions of the superintendent [~~of~~
16 ~~insurance~~] shall be subject to judicial review [~~de-novo~~].”

17
18 SUBTITLE E. RAILWAYS AND TRANSPORTATION
19 Sec. 5.006. COMMISSION’S POWERS AND DUTIES. A new section of
20 Chapter 63, Article 7

21 NMSA 1978 is enacted to read:
22 “[NEW MATERIAL] COMMISSION POWERS AND DUTIES-- RAILWAY
23 TRANSPORTATION AND MOTOR CARRIERS.

24 (a) With respect to railway transportation companies
25 and motor carriers, the commission shall:

Underscored material = new
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1 (1) fix, determine, supervise, regulate and
2 control all charges and rates of railways, express, sleeping
3 car, motor carrier and other transportation companies and
4 motor carriers within the state;

5 (2) determine any matters of public convenience
6 and necessity with respect to matters subject to its
7 regulatory authority as provided by law;

8 (3) require railway companies and motor carriers
9 to provide and maintain clean, safe and adequate equipment,
10 depots, stockpens, station buildings, agents and facilities
11 for the accommodation of shippers and passengers and for
12 receiving and delivering passengers, freight and express and
13 to provide and maintain necessary crossings, culverts, sidings
14 and other facilities for convenience and safety whenever in
15 the commission's judgment the public interest demand;

16 (4) require railway companies, and motor carriers
17 to provide such reasonable safety appliances and use such
18 reasonable safety practices as may be necessary and proper for
19 the safety of employees and the public as required by federal
20 or state law and rules;

21 (5) change, amend and rescind rates;

22 (6) enforce its rules through administrative
23 sanctions and in the courts; and

24 (7) carry out all other duties and have all other
25 powers provided by law.

Underscored material = new
[bracketed material] = delete

1 Sec. 5.007. AMENDMENTS TO MOTOR CARRIER ACT.

2 (a) Section 65-2-82 NMSA 1978 (being Laws 1981, Chapter
3 358, Section 3, as amended by Laws 1989, Chapter 250, Section
4 1 and also by Laws 1989, Chapter 375, Section 1) is amended to
5 read:

6 "65-2-82. DEFINITIONS. --As used in the Motor
7 Carrier Act:

8 (a) "antitrust laws" means the laws of this state
9 relating to combinations in restraint of trade;

10
11 (b) "broker means [~~any~~] a person not included in
12 the term "motor carrier" and not a bona fide employee or agent
13 of any motor carrier who, as principal or agent, sells or
14 offers for sale any transportation subject to the Motor
15 Carrier Act or negotiates for or holds himself [~~of itself~~] out
16 by solicitation, advertisement or otherwise as one who sells,
17 provides, furnishes, contracts or arranges for [~~such~~] that
18 transportation;

19 (c) "certificate" means a certificate of public
20 convenience and necessity issued under authority of the laws
21 of the state to common motor carriers;

22 (d) "clerk" or "chief clerk" means the chief clerk
23 of the [~~state corporation~~] public regulation commission;

24 (e) "commission means the [~~state corporation~~]
25 public regulation commi ssi on;

Underscored material = new
[bracketed material] = delete

1 (f) "common motor carrier" means [~~any~~] a person
2 who undertakes, whether directly or indirectly or by lease of
3 equipment or operating rights or any other arrangement, to
4 transport persons or property or any class of property for the
5 general public by motor vehicle for compensation, whether over
6 regular or irregular routes and under scheduled or
7 nonscheduled service, but does not include farm carriers;

8 (g) "contract motor carrier" means [~~any~~] a person
9 not a common motor carrier who, under individual contracts or
10 agreements and whether directly or indirectly or by lease of
11 equipment or operating rights or any other arrangements,

12 (h) "farm carrier" means [~~any~~] a motor vehicle
13 registered in this state being used in the transportation for
14 hire of a cargo consisting of [~~only~~] one or several of the
15 following: farm produce, including [~~but not limited to~~]
16 grains, cotton, cottonseed, vegetables, hay and other

17
18 farm products; livestock feed; livestock; stock salt; manure,
19 wire; posts; dairy products; and farm or ranch machinery
20 except tractors weighing more than forty-five thousand
21 pounds; -

22 (i) "highway" means the public roads, highways,
23 streets and ways in this state;

24 (j) "household goods" means:

25 (1) personal effects and property used or to

Underscored material = new
[bracketed material] = delete

1 be used in a dwelling when a part of the equipment or supply
2 of the dwelling and other similar property as the commission
3 may provide by [~~regulation~~] rule; except that this paragraph
4 shall not be construed to include property moving from a
5 factory or store, except property as the householder has
6 purchased with intent to use in his dwelling and [~~which~~] that
7 is transported at the request of, and the transportation
8 charges paid to the carrier by, the householder;

9 (2) furniture, fixtures, equipment and the property of
10 stores, offices, ~~museums~~, institutions, hospitals or other
11 establishments when a part of the stock, equipment or supply
12 of stores, offices, ~~museums~~, institutions, hospitals or other
13 establishments and other similar property as the commission
14 may provide by [~~regulation~~] rule; except that this paragraph
15 shall not be construed to include the stock-in-trade of any
16 establishment; whether consignor or consignee, other than used
17 furniture and used fixtures, except when transported as
18 incidental to the moving of the establishment, or a portion
19 [~~thereof~~] of it, from one location to another; and

20 (3) articles, including objects of art, displays
21 and exhibits, [~~which~~] that, because of their unusual nature or
22 value require the specialized handling and equipment usually
23 employed in moving household goods and other similar articles
24 as the commission may provide by [~~regulation~~] rule; except
25 that this paragraph shall not be construed to include any

Underscored material = new
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1 article, whether

2
3 crated or uncrated, [~~which~~] that does not, because of its
4 unusual nature or value, require the specialized handling and
5 equipment usually employed in moving household goods;

6 (k) "interested parties" shall in all cases include all
7 carriers operating over the routes or any part thereof or in
8 the territory involved in [~~any~~] an application for a
9 certificate or permit or [~~any~~] an application to file or
10 change [~~any~~] a schedule of rates, charges, fares or [~~any~~] a
11 rule [~~regulation~~] or practice, and other parties as the
12 commission may deem interested in the particular matter;

13 (l) "irregular route" means that the route to be used
14 by a motor carrier is not restricted to any specific highway
15 within the area the motor carrier is authorized to serve;

16 (m) "lease" means [~~any~~] an arrangement whereby a motor
17 carrier augments his equipment by use of equipment owned by
18 others;

19 (n) "license" means a license issued [~~under~~] pursuant
20 to the Motor Carrier Act to a broker;

21 (o) "motor carrier" includes common motor carriers,
22 contract motor carriers and any person performing for-hire
23 transportation services without authority from the commission
24 and farm carriers;

25 (p) "motor vehicle" means [~~any~~] a vehicle, machine,

Underscored material = new
[bracketed material] = delete

1 tractor, trailer or semi-trailer propelled or drawn by
2 mechanical power and used upon the highways in the
3 transportation of property or persons, but does not include
4 any vehicle, locomotive or car operated exclusively on rail or
5 rails;

6 (q) "permit" means a permit issued under authority of
7 the laws of this state to contract motor carriers;

8 (r) "person" means [~~any~~] an individual, firm,
9 partnership, corporation, company, association or organization
10 and includes any trustee, receiver, assignee or personal
11 representative thereof;

12 (s) "regular route" means a fixed, specific and
13 determined course to be traveled by a motor carrier's vehicles
14 rendering service to, from or between various points,
15 localities or municipalities in this state;

16 (t) the "services" and "transportation" to which the
17 Motor Carrier Act applies includes all vehicles operated by,
18 for or in the interest of any motor carrier irrespective of
19 ownership or of contract, express or ~~implied~~, together with
20 all facilities and property controlled by any motor carrier
21 and used in the transportation of persons or property or in
22 the performance of any service in connection therewith;

23 (u) "shipper" means a person who consigns or receives
24 goods for transportation;

25 (v) "single-line rate" means a rate, charge or

Underscored material = new
[bracketed material] = delete

1 allowance proposed by a single common motor carrier of
2 property that is applicable only over its line and for which
3 the transportation can be provided by that common motor
4 carrier;

5 (w) "state" means [~~the state of~~] New Mexico;

6 (x) "towing company" means [~~any~~] a common motor carrier
7 engaged in transporting for hire disabled or abandoned motor
8 vehicles by means of a tow truck or flatbed vehicle carrier;
9 and

10 (y) "weight-bumping" means the knowing and willful
11 making or securing of a fraudulent weight on a shipment of
12 household goods [~~which~~] that is subject to the jurisdiction of
13 the commission under the Motor Carrier Act."

14 Sec. 5.008. AMENDMENTS REGARDING APPEAL.

15 (a) Section 65-2-120 NMSA 1978 (being Laws 1981,
16 Chapter 358, Section 41, as amended) is repealed and a new
17 Section 65-2-120 NMSA 1978 is enacted to read:

18 "65-2-120. [NEW MATERIAL] APPEAL TO SUPREME COURT. --

19 (b) A railway company, a motor carrier or other party
20 in interest being aggrieved by a final order or determination
21 of the commission pursuant to Chapter 65, Article 2 NMSA 1978
22 may appeal to the supreme court within thirty days.

23 (c) The appeal shall be on the record of the hearing
24 before the commission and shall be governed by the appellate
25 rules applicable to administrative appeals. The supreme court

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[bracketed material] = delete

- 1 shall affirm the commission's order unless it is:
- 2 (1) arbitrary, capricious or an abuse of
- 3 discretion;
- 4 (2) not supported by substantial evidence in the
- 5 record; or
- 6 (3) otherwise not in accordance with law."

7 Sec. 5.009. AMENDMENTS REGARDING COMMISSION'S POWERS AND
8 DUTIES. Section 65-4-4 NMSA 1978 (being Laws 1993, Chapter
9 120, Section 4) is amended to read:

10 (a) "65-4-4. ADMINISTRATION OF ACT. --The [State
11 Corporation] [~~of the State of New Mexico is hereby vested with~~
12 ~~authority to~~] shall administer [~~this act~~] Sections 65-4-1
13 through 65-4-18 NMSA 1978 with full power to regulate and
14 control the issuance and revocation of licenses to be issued
15 under the provisions of [~~this act~~] those sections and to
16 perform all other acts and duties provided in [~~this act and~~]
17 those sections necessary for its enforcement."

18 (b) Section 65-4-18 NMSA 1978 (being Laws 1993, Chapter
19 120, Section 19) is amended to read:

20 "65-4-18. COMMISSION DEFINED. --The term "commission",
21 when used in [~~this act~~] Sections 65-4-1 through 65-4-18 NMSA
22 1978, means the [~~state corporation~~] public regulation
23 commission [~~of the State of New Mexico~~].

24
25 SUBTITLE F. AMBULANCE STANDARDS ACT.

Underscored material = new
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1 Sec. 5.008. Section 65-6-2 NMSA 1978 (being Laws 1974,
2 Chapter 82, Section 2, as amended) is amended to read:

3 "65-6-2. DEFINITIONS. -- As used in the Ambulance
4 Standards Act:

5 (a) "ambulance" means [~~any~~] a vehicle, including motor
6 vehicles or watercraft, designed and used or intended to be
7 used for the transportation of sick or injured persons;

8 (b) "driver" means a person who, on a regular or
9 irregular basis, either paid or voluntary, serves as the
10 operator of an ambulance;

11 (c) "attendant" means a person who, on a regular or
12 irregular basis, either paid or voluntary, serves as an
13 assistant to the [~~ambulance~~] driver in the operation of the
14 ambulance; and

15 (d) "commission" means the [~~state corporation~~] public
16 regulation commission."

17
18 SUBTITLE G. PIPELINE SAFETY ACT

19 Sec. 5.009. Section 70-3-12 NMSA 1978 (being Laws 1969,
20 Chapter 71, Section 2, as amended) is amended to read:

21 "70-3-12. DEFINITIONS. -- As used in the Pipeline Safety
22 Act:

23 (a) "person" means [~~any~~] an individual, firm, joint
24 venture, partnership, corporation, association, state,
25 municipality, political subdivision, cooperative association,

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1 joint stock association or any combination thereof and
2 includes any receiver, trustee, assignee or personal
3 representative thereof;

4 (b) "commission" means the [~~state corporation~~] public
5 regulation commission;

6 (c) "gas" means natural gas, flammable gas or gas that
7 is toxic or corrosive;

8 (d) "oil" means crude oil and liquid hydrocarbons and
9 manufactured products derived from either;

10 (e) "transportation of gas" means the gathering,
11 transmission or distribution of gas by pipeline or its
12 storage, except that it shall not include the gathering of gas
13 in those rural locations [~~which~~] that lie outside the limits
14 of any municipality or unincorporated city, town or village or
15 any residential or commercial area such as a subdivision, a
16 business or shopping center, a community development or any
17 similar populated area [~~which~~] that the commission may define
18 by order as a nonrural area;

19 (f) "transportation of oil" means the transmission of
20 oil by pipeline, except pipelines operated exclusively for the
21 gathering of oil in any field or area or pipelines
22 constituting a part of any tank farm, plant facilities of any
23 processing plant, gasoline plant, refinery, carbon-black
24 plant, recycling system or similar operations;

25 (g) "gas pipeline facilities" means new and existing

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1 pipeline rights of way and any equipment, facility or
2 structure used in the transportation of gas or the treatment
3 of gas during the course of transportation;

4 (h) "oil pipeline facilities" means new and existing
5 pipeline rights of way and any equipment, facility or
6 structure used in the transportation of oil; and

7 (I) "intrastate pipeline facilities" means oil pipeline
8 facilities or gas pipeline facilities within the state that
9 are not gas pipeline facilities subject to the jurisdiction of
10 the federal energy regulatory commission pursuant to the
11 federal Natural Gas Act or oil pipeline facilities used in the
12 transportation of oil in interstate or foreign commerce,
13 except that it shall include pipeline
14 facilities within the state that transport gas from an
15 interstate gas pipeline to a direct sales customer within the
16 state purchasing gas for its own consumption."

17
18 SUBTITLE H. TEMPORARY PROVISIONS; TRANSFERS; REPEALS;

19 DELAYED REPEALS

20 Sec. 5.010. Except as otherwise provided in this section, on
21 January 1, 1999, the commission shall commence operations and
22 all personnel and all money, appropriations, records,
23 furniture, equipment, supplies and other property belonging to
24 the state corporation commission, the insurance board and the
25 New Mexico public utility commission shall be transferred to

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1 the public regulation commission. On January 1, 1999, all
2 personnel and all money, appropriations, records, furniture,
3 equipment, supplies and other property belonging to the
4 attorney general for the provision of legal services to the
5 State corporation commission shall be transferred to the
6 public regulation commission.

7 Sec. 5.011. Except as otherwise provided in this section, on
8 January 1, 1999, all existing contracts, agreements and other
9 obligations in effect for the state corporation commission,
10 the insurance board or the New Mexico public utility
11 commission shall be binding on the public regulation
12 commission.

13 Sec. 5.012. Except as otherwise provided in this section, on
14 January 1, 1999, all pending cases, legal actions, appeals and
15 other legal proceedings of every description and all pending
16 administrative proceedings that involve the state corporation
17 commission, the insurance board or the New Mexico public
18 utility commission shall be unaffected; the files shall be
19 transferred to and shall continue in the name of the public
20 regulation commission.

21 Sec. 5.013. All rules, tariffs, orders and other official
22 acts of the state corporation commission, the insurance board
23 or the New Mexico public utility commission shall continue in
24 effect until amended, replaced or repealed by the public
25 regulation commission as required by this Act; provided,

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1 however, that the public regulation commission shall review
2 all rules, tariffs and other official acts of the state
3 corporation commission and the public utility commission by
4 March 30, 2000 and readopt, amend, replace or repeal them.
5 Sec. 5.014. All references in law and any surviving rules,
6 tariffs, orders and other official acts of the state
7 corporation commission, the insurance board or the New Mexico
8 public utility commission shall be construed to be references
9 to the public regulation commission.

10 Sec. 5.015. On January 1, 1999, all personnel and all money,
11 appropriations, records, furniture, equipment, supplies and
12 other property belonging to the state fire marshal's office,
13 the fire board or the firefighter's training academy of the
14 state corporation commission shall be transferred to the
15 department of public safety. All existing contracts,
16 agreements and other obligations; all appeals and other
17 proceedings; all rules and orders; and all references in law
18 to the state fire marshal's office, the fire board or the
19 firefighter's training academy shall be deemed to be
20 obligations of or references to the department of public
21 safety.

22 Sec. 5.016. REPEAL. -- Sections 53-1-2 through 53-1-6, 53-3-34,
23 59A-1-6, 59A-2-5 and 59A-2-6, 59A-3-1 through 59A-3-9, 62-5-3
24 et seq., the Public Utility Act insofar as said Act deals with
25 the generation, transmission, distribution, sale, purchase or

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1 resale of electric power, 62-6-1 through 62-6-3, 62-10-7, 62-
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4 through 63-4-8, 63-6-1 through 63-6-7, 63-7-2 through 63-7-9,
5 63-7-11 through 63-7-19, 63-8-1 through 63-8-7, 63-9, 9A, 9B,
6 9C, 9D, 9E, 10 and 11, 65-2-118 and 65-2-119 (being Laws 1913,
7 Chapter 68, Sections 2 and 3, Laws 1912, Chapter 83, Section
8 18, Laws 1913, Chapter 83, Section 11, Laws 1951, Chapter 93,
9 Section 1, Laws 1965, Chapter 292, Secs. 1-19; and Chapter 21,
10 Sec. 1-7, Laws 1967, Chapter 96, Sec. 2. under and said Laws
11 deal with the generation, transmission, distribution, sale,
12 purchase or resale of electric power, Laws of 1985, Chapter
13 242, Laws of 1987, Chapter 21, Laws 1987, Chapter 296, Laws
14 1979, Chapter 390, Section 11, Laws 1984, Chapter 127,
15 Sections 6, 23, 24, 35, 36 and 38 through 44, Laws 1941,
16 Chapter 84, Section 3, Laws 1977, Chapter 255, Section 121,
17 laws 1941, Chapter 84, Sections 4 through 8, 10 through 16, 56
18 and 64, Laws 1939, Chapter 47, Section 29, Laws 1878, Chapter
19 1, Section, 8-23, Laws 1882, Chapter 59, Section 1, Laws 1947,
20 Chapter 49, Sections 2 and 2, laws 1878, Chapter 1, Section 8-
21 14, Laws 1882, Chapter 60, Sections 1 and 2, Laws 1878,
22 Chapter 1, Sections 9-3 and 8-18, Laws 1882, Chapter 59,
23 Sections 2 through 7 and 9, Laws 1878, Chapter 1, Section 8-
24 12, Laws 1912, Chapter 62, Sections 1 and 2, Laws 1878,
25 Chapter 1, Section 8-13, Laws 1915, Chapter 37, Sections 1

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1 through 4, Laws 1921, Chapter 200, Sections 1 through 8, Laws
2 1878, Chapter 1, Sections 9-4 through 9-10, Laws 1912, Chapter
3 78, Sections 2 through 5, Laws 1925, Chapter 19, Section 1,
4 Laws 1912, Chapter 78, Sections 6 through 8 and 10 through 18,
5 Laws 1955, Chapter 43, Sections 1 through 7, Laws 1965,
6 Chapter 292, Sections 12 through 14 and 17, Laws 1985, Chapter
7 242, Sections 13, 15, 17 and 18, Laws 1987, Chapter 296,
8 Sections 7, 11 and 12, and Laws 1981, Chapter 358, Sections 39
9 and 40, as amended) are repealed.

10 Sec. 5.017. EFFECTIVE DATE. -- The effective date of the
11 provisions of this act is January 1,
12 1999.

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25

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3
4
5
6 January 31, 1998

7
8 Mr. President:

9
10 Your COMMITTEES' COMMITTEE, to whom has been referred

11
12 SENATE BILL 194

13
14 has had it under consideration and finds same to be GERMANE, in
15 accordance with constitutional provisions, and thence referred to the
16 CORPORATIONS & TRANSPORTATION COMMITTEE.

17
18
19 Respectfully submitted,

20
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22
23
24 _____
25 Manny M. Aragon, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Date _____

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